

see V. 2456

**No. 11483**

IN THE

**United States Circuit Court of Appeals**

FOR THE NINTH CIRCUIT

---

LARRY FINLEY and MIRIAM FINLEY,

Appellants,

vs.

MUSIC CORPORATION OF AMERICA, a corporation,  
H. E. BISHOP and LAWRENCE BARNETT,

Appellees,

and

MUSIC CORPORATION OF AMERICA, a corporation,  
H. E. BISHOP and LAWRENCE BARNETT,

Appellants,

vs.

LARRY FINLEY and MIRIAM FINLEY,

Appellees,

---

**TRANSCRIPT OF RECORD**

(In Four Volumes)

**VOLUME I**

(Pages 1 to 320, Inclusive)

Upon Appeals from the District Court of the United States  
for the Southern District of California,

Central Division

**FILED**

1937 24

PAUL P. O'BRIEN,

CLERK



**No. 11483**

IN THE

**United States Circuit Court of Appeals**

FOR THE NINTH CIRCUIT

---

LARRY FINLEY and MIRIAM FINLEY,

Appellants,

vs.

MUSIC CORPORATION OF AMERICA, a corporation,  
H. E. BISHOP and LAWRENCE BARNETT,

Appellees,

and

MUSIC CORPORATION OF AMERICA, a corporation,  
H. E. BISHOP and LAWRENCE BARNETT,

Appellants,

vs.

LARRY FINLEY and MIRIAM FINLEY,

Appellees,

---

**TRANSCRIPT OF RECORD**

(In Four Volumes)

**VOLUME I**

(Pages 1 to 320, Inclusive)

Upon Appeals from the District Court of the United States  
for the Southern District of California,  
Central Division

---





# INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	Page
Amended Complaint for Damages and Injunction	
Under Sherman Anti-Trust Act.....	20
Answer to Complaint.....	12
Appeal:	
Notice of, Defendants'.....	83
Notice of, Plaintiffs'.....	82
Stipulation and Order re Record on, etc.....	85
Statement of Points on Which Appellants Larry Finley and Miriam Finley Intend to Rely on (Circuit Court) .....	1326
Statement of Points on Which Appellants Music Corp. of America, et al., Intend to Rely on (Circuit Court) .....	1327
Application for Attorneys' Fees, Attorneys for the Plaintiffs .....	37
Exhibit A. Schedule of Actual Time Expended by Counsel for Plaintiffs.....	43
Certificate of Clerk.....	87
Complaint for Damages and Injunction Under Sher- man Anti-Trust Act.....	2
Complaint for Damages and Injunction Under Sher- man Anti-Trust Act, Amended.....	20
Designation of Record for Printing (Circuit Court)..	1325
Instructions, Defendants' Requested.....	30
Instructions, Defendants' Requested Additional.....	33
Judgment .....	56
Judgment, Ruling on Defendants' Motions for Judg- ment Notwithstanding the Verdict, for New Trial and .....	75

	Page
Memorandum of Conclusions on Defendants' Motions for Judgment Notwithstanding the Verdict and for New Trial .....	70
Memorandum of Costs and Disbursements.....	58
Minute Order Entered February 6, 1946.....	17
Minute Order Entered March 21, 1946.....	55
Motion of Defendants for Judgment Notwithstanding the Verdict .....	62
Motion of Defendants for New Trial.....	63
Motion of Defendants to Reform and Modify Order and for Judgment.....	78
Names and Addresses of Attorneys.....	1
Notice of Appeal, Defendants'.....	83
Notice of Appeal, Plaintiffs'.....	82
Order Denying Motion to Reform and Modify Order and Judgment .....	82
Reporter's Transcript of Proceedings Commencing Friday, September 28, 1945.....	1254
Reporter's Transcript of Proceedings Commencing Friday, December 21, 1945.....	1288
Reporter's Transcript of Proceedings Commencing Tuesday, January 29, 1946.....	89
Plaintiffs' Exhibits (See Index to Exhibits)	
Defendants' Exhibits (See Index to Exhibits)	
Testimony on Behalf of Plaintiff:	
Austin, De Graff—	
Direct examination .....	126
Cross-examination .....	130
Redirect examination .....	133

## Reporter's Transcript, January 29, 1946:

## Testimony on Behalf of Plaintiffs: Page

## Calland, Leo B.—

Direct examination .....	143
Cross-examination .....	149
Redirect examination .....	156

## Cohen, Bernie—

Direct examination .....	176
Cross-examination .....	180
Redirect examination .....	185
Recross-examination .....	186
Redirect examination .....	187
Recross-examination .....	188
Redirect examination .....	191
Recross-examination .....	191
Redirect examination .....	192

## Crary, Gerald C.—

Direct examination .....	133
Cross-examination .....	136
Redirect examination .....	140
Recross-examination .....	142

## Dailard, Wayne—

Direct examination .....	385
Cross-examination .....	415
Redirect examination .....	449
Recross-examination (recalled) .....	532
Redirect examination .....	533

## Desser, Arthur A.—

Direct examination (rebuttal).....	1107
Cross-examination .....	1111

## Reporter's Transcript, January 29, 1946:

Testimony on Behalf of Plaintiffs:	Page
Dexter, Dave Jr.—	
Direct examination .....	260
Cross-examination .....	265
Finley, Larry—	
Direct examination .....	534
Cross-examination .....	618
Redirect examination .....	686
Hansen, Eugene A.—	
Direct examination .....	696
Cross-examination (recalled) .....	742
Cross-examination (recalled) .....	773
Redirect examination .....	774
Howard, Hal—	
Cross-examination .....	363
Redirect examination .....	366
Recross-examination .....	366
Katleman, Isabel—	
Direct examination .....	271
Cross-examination .....	279
Redirect examination .....	315
Recross-examination .....	317
Knox, Harley E.—	
Direct examination .....	105
Cross-examination .....	118
Redirect examination .....	122
Recross-examination .....	123

## Reporter's Transcript, January 29, 1946:

## Testimony on Behalf of Plaintiffs: Page

## McDonald, William—

Direct examination .....	322
Cross-examination .....	340
Redirect examination .....	352
Recross-examination .....	355
Redirect examination .....	357

## Mirken, Lawrence—

Direct examination (rebuttal).....	1126
Cross-examination .....	1129

## Ostrow, Jack Marvin—

Direct examination .....	688
Cross-examination (recalled) .....	714
Cross-examination (recalled) .....	752
Redirect examination .....	768
Recross-examination .....	769

## Shea, Larry—

Direct examination .....	244
Cross-examination .....	248
Redirect examination .....	255

## Stein, Jules—

Direct examination .....	480
Cross-examination .....	494
Reirect examination .....	501
Recross-examination .....	504

## Reporter's Transcript, January 29, 1946:

Testimony on Behalf of Plaintiffs:	Page
Stutz, Walter R.—	
Direct examination .....	699
Cross-examination .....	703
Redirect examination .....	704
Recross-examination .....	705
Redirect examination .....	707
Weston, Bruce—	
Direct examination .....	160
Cross-examination .....	162
Redirect examination .....	164
Recross-examination .....	164
Wick, Charles—	
Direct examination .....	358
Cross-examination .....	359
Redirect examination .....	361
Wonders, Ralph—	
Direct examination .....	192
Cross-examination .....	215
Redirect examination .....	231
Recross-examination .....	235
Redirect examination .....	241
Recross-examination .....	243
Direct examination (recalled).....	256
Cross-examination .....	258
Redirect examination .....	260
Zucca, Joseph—	
Direct examination .....	165
Cross-examination .....	171

## Reporter's Transcript, January 29, 1946:

## Testimony on Behalf of Defendants:

## Barnett, Lawrence—

Direct examination .....	956
Cross-examination .....	992
Redirect examination .....	1011
Recross-examination .....	1014
Redirect examination .....	1021
Recross-examination .....	1022

## Bishop, Harold Eames—

Direct examination .....	842
Direct examination (recalled).....	891
Cross-examination .....	907
Redirect examination .....	942
Recross-examination .....	947
Redirect examination .....	955

## Dailard, Wayne W.—

Direct examination .....	868
Cross-examination .....	883
Redirect examination .....	888
Recross-examination .....	889
Redirect examination .....	890
Direct examination (recalled).....	1024
Cross-examination (recalled) .....	1096
Redirect examination .....	1105

## Howard, Harold—

Direct examination .....	805
Cross-examination .....	822
Redirect examination .....	832
Recross-examination .....	836
Redirect examination .....	840
Recross-examination .....	841



## Reporter's Transcript, January 29, 1946:

• Testimony on Behalf of Defendants:	Page
Ross, N. J.—	
Direct examination .....	1029
Cross-examination .....	1046
Simpson, Fred W.—	
Direct examination .....	860
Stein, Jules—	
Direct examination .....	1047
Cross-examination .....	1080
Redirect examination .....	1095
Reporter's Transcript of Proceedings Commencing Tuesday, February 12, 1946.....	1171
Reporter's Transcript of Proceedings Commencing Thursday, March 21, 1946.....	1295
Reporter's Transcript of Proceedings Commencing Friday, June 14, 1946.....	1307
Statement of Points on Which Appellants Larry Fin- ley and Miriam Finley Intend to Rely on Appeal (Circuit Court) .....	1326
Statement of Points on Which Appellants Music Corp. of America, et al., Intend to Rely on Appeal (Circuit Court) .....	1327
Ruling on Defendants' Motions for Judgment Not- withstanding the Verdict, for a New Trial and Judgment .....	75
Ruling on Defendants' Motions for Judgment Not- withstanding the Verdict and for New Trial, Par- tial .....	69
Stipulation and Order re Record on Appeal, etc.....	85
Stipulation re Costs.....	60
Verdict of the Jury.....	37



## INDEX TO EXHIBITS

## Plaintiffs' Exhibits:

No.	Page
1, 2, 3, 4—Photographs from various angles of the interior of the Mission Beach Ballroom (In Evidence) .....	117
5 —Deposition of Kenneth Later (In Evidence) .....	384
(In Transcript) .....	367
6 —Bid submitted to the City Council of San Diego, signed by Wayne Dailard and Edmund A. Wakelin (In Evidence).....	392
(In Transcript) .....	393
7 —Three newspaper advertisements in The Tribune-Sun, dated May 14, 1945; May 15, 1945 and May 16, 1945 (In Evidence).....	403
(In Transcript) .....	403
8 —Bid submitted to the City Council of San Diego by Larry Finley (In Evidence).....	407
(In Transcript) .....	505
9 —List of bands which have appeared at both Pacific Square and Mission Beach (In Evidence) .....	409
(In Transcript) .....	457
10 —Group of photographs (In Evidence).....	411
11 —List of dance bands represented by Music Corporation of America (For Identification) .....	504
12-A—Report rendered by auditor, dated February 28, 1945 (For Identification).....	617
(In Evidence) .....	691

Plaintiffs' Exhibits:

No.	Page
12-B—Report rendered by auditor, dated May 31, 1945 (For Identification).....	617
(In Evidence) .....	691
12-C—Report rendered by auditor, dated July 31, 1945 (For Identification).....	617
(In Evidence) .....	694
12-D—Report rendered by auditor, dated September 30, 1945 (For Identification).....	617
(In Evidence) .....	697
12-E—Report rendered by auditor, dated October 31, 1945 (For Identification).....	617
(In Evidence) .....	698
12-F—Report rendered by auditor, dated December 31, 1945 (For Identification).....	617
(In Evidence) .....	699
12-G—Report rendered by auditor, dated June 30, 1945 (For Identification).....	617
(In Evidence) .....	693
13 —Profit and Loss statement from July 1 to December 31, 1945 (For Identification).....	703

Defendants' Exhibits:

A. Form B contract of the American Federation of Musicians (For Identification).....	219
B. Contract of Musicians Mutual Protective Association Local 47, A. F. of M. (For Identification) .....	220

Defendants' Exhibits:	Page
C. Letter dated September 13, 1944, to Larry Finley from Jack Flynn (In Evidence).....	281
(In Transcript) .....	281
D. Letter dated September 14, 1944, to Larry Finley from Frederick Bros. (For Identification) .....	290
(In Transcript) .....	291
E. Photostatic copy of a letter, dated November 4, 1941, from Music Corporation of America to Pacific Square Corporation (In Evidence)..	307
(In Transcript) .....	308
F. Agreement dated May 3, 1944, between Music Corporation of America and Wayne W. Dailard and Frances A. Dailard (In Evidence).....	310
(In Transcript) .....	311
G. Advertisement in a San Diego paper, dated May 11, 1945 (In Evidence).....	437
(In Transcript) .....	438
H. Advertisement in the San Diego Journal, dated May 11, 1945 (In Evidence).....	437
(In Transcript) .....	438
I. Groups of photographs taken of Pacific Square Ballroom (In Evidence).....	441
J. Group of photographs taken of the interior of Pacific Square Ballroom (In Evidence).....	442
K. Letter dated February 27, 1945, to Mr. Finley from Hal Howard (In Evidence).....	660
(In Transcript) .....	660

Defendants' Exhibits:	Page
L. Letter dated December 11, 1945, to City Council of San Diego from Larry Finley (In Evidence) .....	788
(In Transcript) .....	1142
M. Inter-office communication, dated January 11, 1945 (In Evidence).....	906
(In Transcript) .....	906
N. Memorandum dated February 2, 1945 (For Identification) .....	988
O. Memorandum dated February 20, 1945 (For Identification) .....	989
P. Statement rendered by Mr. Rothman, certified public accountant (In Evidence).....	1025
Q. Booklet carrying a legend list of booking agents, dated February 1, 1945 (For Identification) .....	1055
(In Evidence) .....	1065
R. Constitution and by-laws of the American Federation of Musicians as of January 1 or February 1, 1945 (In Evidence).....	1066
R-1. Excerpts from by-laws of the American Federation of Musicians (In Evidence).....	1255

NAMES AND ADDRESSES OF ATTORNEYS:

For Appellants and Cross-Appellees:

DESSER, RAU & CHRISTENSEN

325 West Eighth Street

Los Angeles 14, Calif.

For Appellees and Cross-Appellants:

PACHT, PELTON, WARNE, ROSS &  
BERNHARD

9700 Wilshire Boulevard

Beverly Hills, Calif. [1\*]

In the District Court of the United States  
Southern District of California  
Central Division

No. 4328-O'C

LARRY FINLEY,

Plaintiff,

vs.

MUSIC CORPORATION OF AMERICA, a Delaware  
corporation; JULES C. STEIN; H. E. BISHOP;  
LAWRENCE BARNET, DOE ONE, DOE TWO,  
DOE THREE, DOE FOUR, DOE FIVE, DOE SIX,  
DOE SEVEN, and DOE EIGHT,

Defendants.

COMPLAINT FOR DAMAGES AND INJUNCTION,  
UNDER SHERMAN ANTI-TRUST ACT  
(Act of July 2, 1890; 26 Stat. 209)

Plaintiff complains of defendants above-named and for  
cause of action alleges:

I.

Plaintiff is now, and ever since the 3rd day of January, 1945, has been, the Operator under a three-year lease from the City of San Diego, State of California, of a certain Amusement Park in the said City of San Diego known as "Mission Beach Amusement Park," and of the Mission Beach Ballroom, an adjunct of said amusement park; said written lease has approximately two (2) years and nine (9) months to run before the term thereof expires. [2]

II.

One Wayne Dailard is now, and for a long time last past has been, the owner and operator of a certain ball-room in the City of San Diego, California, known as "Pacific Square"; and said Dailard was for a period of five (5) years and until the 31st day of December, 1944, the Lessee from the City of San Diego and the Operator of said Mission Beach Amusement Park and said ball-room in said Mission Beach Amusement Park.

III.

Defendant Music Corporation of America is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, having its principal place of business in the City of Chicago, State of Illinois. Said corporation is now, and at all times since the month of April, 1938, has been qualified, licensed, and authorized to transact and do business in the State of California, and maintains an office in the City of Beverly Hills, State of California.

Defendant Jules C. Stein is now, and at all times herein mentioned was, the President of defendant Music Corporation of America, and resides in the City of Beverly Hills, California.

Defendant H. E. Bishop is now, and at all times herein mentioned was, an agent, employee, and servant of defendant Music Corporation of America, and occupies the Position with his said employer known as "orchestra broker."

Defendant Lawrence Barnet is now, and at all times herein mentioned was, an agent, employee, and servant of defendant Music Corporation of America and the Vice-President in charge of orchestras.



Defendants Doe One, Doe Two, Doe Three, Doe Four, Doe Five, Doe Six, Doe Seven, and Doe Eight are agents, servants, employees, officers, and directors of defendant Music Corporation of America, and are sued herein under said fictitious names for [3] the reason that plaintiff does not now know their true names or capacities, and plaintiff asks leave of Court to amend this complaint and insert such true names and capacities when the same become ascertained by him.

#### IV.

Defendant Music Corporation of America is engaged in the business of acting as personal representative and employment agent for many persons in the entertainment industry in the United States and is engaged in carrying on an extensive interstate business in the representation as such personal representative and agent for many artists and organizations in various fields of entertainment. In the course of its said representation and agency said defendant transports between the several states of the United States not only the various members of entertainment groups, dance bands, vocal organizations, and the like, but in connection therewith transports between the several states large quantities of costumes, musical instruments, musical arrangements, and other paraphernalia of the entertainment business, all of which are equally, if not more important than the personnel involved in such transactions. In particular, said defendant is now, and for many years last past has been, the personal representative and agent for employment purposes of approximately ninety-five percent (95%) of all "name" bands, and the owners, directors, and leaders of such "name" bands within the United States. By "name" bands, as used herein, is



meant dance bands and orchestras who engage in fields of entertainment such as radio, motion pictures, theatrical, and ballrooms, and the names of whose leaders are renowned and well known to the general public throughout the United States and internationally. Included within the "name" bands represented by said defendant are the following: Harry James, Tommy Dorsey, Jan Garber, Ted Fiorito, Gene Krupa, Ted Lewis, Benny Goodman, Kay Kyser, [4] Sammy Kaye, Freddy Martin, Guy Lombardo, Xavier Cugat, Charlie Barret, Jack Teagarden, Bob Chester, Phil Harris, Skinnay Ennis, Joe Reichman, Louis Armstrong, Les Brown, Bernie Cummins, Al Donahue, Henry King, Harry Owens, and Tommy Tucker.

## V.

Defendant Music Corporation of America and said Wayne Dailard have heretofore entered into, and there is now in full force and effect, an agreement whereby said Wayne Dailard shall have the exclusive right to employ and use the artists and "name" bands represented by defendant Music Corporation of America within San Diego County, State of California; and defendants and each of them, and said Wayne Dailard, have unlawfully engaged in a combination and conspiracy in violation of the provisions of the Act of Congress passed July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and are engaged in such combination and conspiracy to place unlawful restraint upon the trade and commerce of musical entertainment between the several states and territories of the United States.

## VI.

As an example of some of the acts and things done by defendants, and each of them, and said Wayne Dailard, in carrying out said unlawful combination and conspiracy, plaintiff alleges that defendants, and each of them, and said Wayne Dailard, have done or caused to be done the following acts and things and adopted the courses of conduct hereinafter described:

A. In or about the month of November, 1944, plaintiff was advised by the City of San Diego, that he had been awarded a lease upon said Mission Beach Amusement Park and Mission Beach Ballroom, for a period of three (3) years commencing January 3, 1945; plaintiff immediately thereupon commenced negotiations with defendant Music [5] Corporation of America and its officers, agents, and employees, hereinabove referred to, for the purpose of obtaining the services of the "name" bands controlled by said defendants at said Mission Beach Ballroom, and defendant Music Corporation of America and its said officers, agents, and employees agreed to supply to plaintiff said "name" bands at prices currently being offered to other ballrooms. In reliance thereon, plaintiff undertook the preparation of said Mission Beach Ballroom for a grand opening on the 3rd day of February, 1945, and continuously during the months of December, 1944, and January, 1945, requested of defendant and its said agents, servants, and employees that he be advised of the identity of the "name" band who would be supplied for said grand opening. Said defendant and its said agents, servants, and

employees, consistently refused to furnish plaintiff with the information requested or to offer to him any "name" band, or any band, or any musical entertainment for said purpose.

B. During the early part of the month of February, 1945, plaintiff personally, and through his attorneys, advised defendant Music Corporation of America that he intended to commence an action against it under the Sherman Anti-Trust Act, and immediately thereafter and on or about the 23rd day of February, 1945, defendant Music Corporation of America and its agents, servants, and employees, offered to book Jack Teagarden at plaintiff's said ballroom at a price of Twenty-two Hundred and Fifty Dollars (\$2,250), minimum guarantee against fifty per cent (50%) of the gross receipts to be taken in by said ballroom for a two-night engagement. Plaintiff is informed and believes and therefore alleges, that the price at which said defendants quoted [6] Jack Teagarden and his orchestra to plaintiff was substantially higher than the current price to other ballrooms of the size and character similar to that of plaintiff for said "name" band.

C. From time to time during the months of January and February, 1945, plaintiff advised defendant Music Corporation of America and its said agents, servants, and employees, of various "name" bands he desired to engage for performances at his said ballroom, and in each of said instances, the "name" band indicated by plaintiff to said defendants as desirable was subsequently booked into said ballroom operated by said Wayne Dailard.

D. On or about the 20th day of January, 1945, defendant Music Corporation of America and its agents, servants, and employees, offered to book the King Sisters, a vocal quartet, for plaintiff's said ballroom, on February 10 and February 11, 1945, at a price of One Thousand, Five Hundred Dollars (\$1,500) for both nights. Plaintiff accepted said offer and daily thereafter requested of said defendants that the contracts for said booking be forwarded to him. Plaintiff received no reply from said defendants, and on or about the 25th day of January, 1945, plaintiff was advised by reading an advertisement in the San Diego Newspapers, that said King Sisters were booked into said Pacific Square, the ballroom operated by said Wayne Dailard, for an engagement on the 2nd to 4th days of February, 1945.

E. Plaintiff is informed and believes, and upon such information and belief alleges, that as to the few "name" bands not controlled by defendant Music Corporation of America said defendant and its officers, agents, servants, and employees have through means and methods unknown to plaintiff exerted pressure and influence upon the personal representatives [7] and employment agents for said few remaining "name" bands, compelling them to refrain from and refuse to offer said "name" bands for bookings at plaintiff's said ballroom other than at prices very substantially higher than the current prices commanded by said "name" bands at other ballrooms of the size and character similar to that of plaintiff.

F. Plaintiff is informed and believes, and upon such information and belief alleges, that defendant Music Corporation of America has and maintains exclusive contracts for various localities with many other ballrooms, one in each of such localities, similar to the arrangement between said defendant and said Wayne Dailard in the County of San Diego, California; and plaintiff is further informed and believes, and upon such information and belief alleges, that defendant Music Corporation of America, through means and methods unknown to plaintiff, compels other personal representatives and employment agents to split fees with it upon bookings of clients of said other personal representatives and employment agents in said ballrooms with whom said defendant has exclusive agreement in said various localities.

G. On or about the 27th day of February, 1945, defendant Music Corporation of America and its said agents, servants, and employees, offered to book Ted Fiorito and his orchestra at plaintiff's said ballroom, at and for a price of Two Thousand, Five Hundred Dollars (\$2,500), minimum guarantee against fifty per cent (50%) of the gross receipts for a two-night engagement. Plaintiff is informed and believes, and upon such information and belief alleges, that said price so quoted is very substantially in excess of the price currently being asked [8] for such orchestra of other ballrooms of a size and character similar to that of plaintiff.

## VII.

As a result of the combination and conspiracy hereinbefore alleged, and of the various acts done in pursuance thereof by defendants, and each of them, plaintiff has been unable to obtain first-class musical entertainment and "name" bands for appearances and exhibitions at the said Mission Beach Ballroom at the said Mission Beach Amusement Park in the City of San Diego, California, and has been restricted in his trade and competition with other ballrooms in said City of San Diego; all of which was and is injurious to plaintiff and excluded plaintiff from competition in the trade, and because of such inability to compete by reason of the foregoing, he has been damaged in that his business has been rendered unprofitable, and will continue to be rendered unprofitable during the remainder of the term of his said lease: all to his damage in the sum of One Million Dollars (\$1,000,000.00); and plaintiff is entitled under the laws of the United States, to wit, Section 7 of the Sherman Law above referred to, to recover three-fold his actual damages, to wit, the sum of Three Million Dollars (\$3,000,000.00).

## VIII.

Plaintiff, in order to enforce his rights against the defendants, has employed the services of Messrs. Dessert, Rau & Christensen, a firm of attorneys in the City of Los Angeles, State of California, the members of whom are all licensed and authorized to practice before the



District Courts of the United States, and under the laws of the United States, [9] to wit, Section 7 of the Sherman Act, plaintiff is entitled to recover from defendants a reasonable attorneys' fees, and that reasonable attorneys' fees in this action is the sum of One Hundred Thousand Dollars (\$100,000).

### IX.

There is a diversity of citizenship of the parties in this action, and by reason thereof and by reason of the provisions of Chapter 648 of the United States of 1890 and the Acts amendatory thereto, this Court has jurisdiction of the parties hereto and the subject matter of this action.

Wherefore, plaintiff prays judgment against the defendants and each of them for the sum of One Million Dollars (\$1,000,000) as damages, and that said sum be trebled in accordance with the provisions of Section 7 of the Act of July 2, 1890, 26 Stat. 209; for reasonable attorneys' fees in the sum of One Hundred Thousand Dollars (\$100,000); and for costs of suit herein incurred.

DESSER, RAU & CHRISTENSEN

By Arthur A. Desser

Attorneys for Plaintiff [10]

[Verified.]

[Endorsed]: Filed Mar. 20, 1945. [11]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT OF DEFENDANTS  
MUSIC CORPORATION OF AMERICA, JULES  
C. STEIN, H. E. BISHOP AND ~~LAWRENCE~~  
~~BARNET~~ LAWRENCE R. BARNETT

Defendants Music Corporation of America, a corporation, (hereinafter referred to as MCA), Jules C. Stein, H. E. Bishop and ~~Lawrence Barnet~~, Lawrence R. Barnett (purs to ord 2/8/46 L.B.F.) jointly and severally answer plaintiff's complaint, and admit, deny and allege as follows:

I.

Answering Paragraph I, defendants allege that they have no knowledge or information sufficient to form a belief as to the truth of the averments thereof.

II.

Answering Paragraph II, defendants allege that they have no knowledge or information sufficient to form a belief as to the [12] truth of the averments thereof.

III.

Answering Paragraph III, defendants admit that MCA is a Delaware corporation licensed and authorized to do and transact business in the State of California, and that it maintains an office in the City of Beverly Hills, State of California; admit that Jules C. Stein has been and is the president of said MCA and that he resides in the



City of Beverly Hills; admits that defendant H. E. Bishop is an employee and servant of defendant MCA, but deny that he occupies a position with said company known as "Orchestra Broker"; admit that defendant ~~Lawrence Barnett~~ Lawrence R. Barnett [purs to ord 2/8/46 L.B.F.] was and is an employee and vice president of defendant MCA.

#### IV.

Answering Paragraph IV, defendants admit that defendant MCA is engaged in the business of acting as employment agent for persons who are employed in the entertainment industry in the United States, and admit that defendant MCA has in the past, and is now, acting as employment agent for certain persons who, as leaders or directors of musicians who work together as bands or orchestras, accept and obtain employment to render their services for theatres, ballrooms, dance halls and places of entertainment. Admit that MCA represents as employment agent those certain persons who are such leaders or directors of bands or orchestras and whose names are listed in plaintiff's complaint, Paragraph IV, page 3, line 31, to page 4, line 4. Further answering said paragraph, defendants deny each and every other allegation therein contained.

#### V.

Answering Paragraph V, defendants deny each and every allegation therein contained. [13]

## VI.

Answering Paragraph VI, defendants deny, insofar as it is averred that they or any of them, together with Wayne Dailard or with any other person, are, or at any times were, engaged in or were carrying out any unlawful combination or conspiracy either as alleged in said complaint or otherwise, or at all. By way of answer to the specific sub-paragraphs of said Paragraph VI, defendants state:

(a) Answering sub-paragraph A thereof, defendants admit that plaintiff at some time prior to January 3, 1945, offered to enter into a contract to employ certain bands and orchestras, the persons comprising which the defendant MCA represented as employment agent, and that certain conversations were had between employees of said MCA and said plaintiff concerning said offer. Further answering said sub-paragraph, defendants deny each and every allegation therein contained.

(b) Answering sub-paragraph B, defendants admit that defendant MCA, as employment agent for Jack Teagarden and the musicians who worked together with him as a band or orchestra, offered to contract for the employment of said Jack Teagarden and said musician members of his band at a price of \$2,250.00 as a minimum guarantee, against 50% of the gross receipts, for a two-night engagement. Further answering said sub-paragraph, de-

fendants deny each and every other allegation therein contained.

(c) Answering sub-paragraph C, defendants deny each and every allegation therein contained.

(d) Answering sub-paragraph D, defendants deny each and every allegation therein contained.

(e) Answering sub-paragraph E, defendants deny each and every allegation therein contained.

(f) Answering sub-paragraph F, defendants deny each [14] and every allegation therein contained.

(g) Answering sub-paragraph G, defendants admit that MCA, as employment agent for Ted FioRito and the musicians who worked together with him as a band or orchestra, offered the employment of said Ted FioRito and said musician members of his band at a price of \$2,500.00 minimum guarantee against 50% of the gross receipts for a two-night engagement. Further answering said sub-paragraph, defendants deny each and every other allegation therein contained.

## VII.

Answering Paragraph VII, defendants deny each and every allegation therein contained. Defendants specifically deny plaintiff has been damaged by any act or conduct on their part, either as alleged in said complaint, or at all, in the sum of \$1,000,000, or in any other sum or amount whatsoever.

## VIII.

Answering Paragraph VIII, defendants deny each and every allegation therein contained.

## IX.

Answering Paragraph IX, defendants deny that there is a diversity of citizenship of most of the parties to said action and that all of the defendants except MCA are citizens and residents of the State of California.

## SECOND DEFENSE

## X.

Defendants aver that said complaint does not, nor does any part thereof, state a claim upon which recovery can be had as against [15] said defendants, or any of them.

Wherefore, defendants pray that plaintiff take nothing by his complaint herein filed; for their costs herein incurred, and for all proper relief.

PACHT, PELTON, WARNE, ROSS & BERNHARD

CLORE WARNE

N. JOSEPH ROSS

LOUIS M. BROWN

Attorneys for Said Defendants

Received copy of the within Answer to Complaint this 2nd day of July, 1945. Dessler, Rau & Christensen.

[Endorsed]: Filed Jul. 2, 1945. [16]

[Minutes: Wednesday, February 6, 1946]

Present: The Honorable Paul J. McCormick, District Judge.

This cause coming on for further jury trial; Wm. H. Christensen, F. Fillmore Jaffe, and L. M. Karp, Esqs., appearing as counsel for the plaintiff; Frank P. Doherty, Clore Warne, and Harold F. Collins, Esqs., appearing as counsel for the defendants; the jury is present and it is ordered that trial proceed.

Attorney Doherty makes a statement and presents written objections of defendants to introduction of records and further evidence re alleged damages suffered by plaintiff, which are filed and entered in the record, and the Court states that rulings heretofore made will stand and that the Court will reserve further rulings at this time. Respective counsel stipulate as to certain interrogatories and answers thereto.

Jack M. Ostrow, a witness for the plaintiff, heretofore sworn, resumes the stand and testifies further on examination by Attorney Doherty.

Eugene A. Hansen, a witness for the plaintiff, heretofore sworn, resumes the stand and testifies further on examination by Attorney Doherty.

At 12 o'clock noon the Court reminds the jury of the admonition heretofore given and recesses to 2 P. M.

Court reconvenes at 2:05 P. M.; all present as before; the jury is present and it is ordered that trial proceed.

Eugene A. Hansen, a witness for the plaintiff, heretofore sworn, resumes the stand and testifies further on examination by Attorney Doherty. [17]

Jack M. Ostrow, a witness for the plaintiff, heretofore sworn, resumes the stand and testifies further on examination by Attorneys Doherty and Christensen.

Eugene A. Hansen, a witness for the plaintiff, heretofore sworn, resumes the stand and testifies further on examination by Attorneys Doherty and Christensen.

At 3:05 P. M. the Court reminds the jury of the admonition heretofore given and declares a recess.

At 3:25 P. M. Court reconvenes; all present as before, except the jury. Court having reconvened with the jury absent and out of hearing of the Court Room, at the request of counsel for the plaintiff, Attorney Christensen moves the Court to permit the plaintiff to file an amended complaint, and presents the said amended complaint to the Court and copy to opposing counsel.

Attorney Collins argues in opposition to the motion. Attorney Christensen argues further.

The Court makes a statement of its views and grants the motion of plaintiff to file amended complaint. The amended complaint is filed by the Clerk.

Attorney Collins makes a statement and it is stipulated and ordered that the defendants' answer to the original complaint may stand as the answer to the amended complaint.



Attorney Doherty makes a statement. The Court makes a further statement of its views.

At 3:57 P. M. the Court directs that the jury be brought into Court, and the jury returns to the Court Room.

Defendants' Exhibit L is offered and admitted into evidence.

At 4 P. M. the Court reminds the jury of the admonition heretofore given and excuses them until 10 A. M., February 7, 1946, and the jury leaves the Court Room.

After the jury leaves the Court Room, Attorney Christensen moves that the action be dismissed as to defendant Jules C. Stein, and it is so ordered. Plaintiff rests. [18]

Attorney Collins, on behalf of the defendants, moves that the Court direct a verdict in favor of the defendants, and presents a written motion to the Court, which is filed.

Attorney Collins argues on said motion.

The Court makes a statement of its views and it is ordered that the motion of defendants for a directed verdict be, and it is, denied, without prejudice.

At 4:40 P. M. court recesses in this trial to 10 A. M., February 6, 1946, and court adjourns. [19]

[Title of District Court and Cause.]

AMENDED COMPLAINT FOR DAMAGES AND  
INJUNCTION, UNDER SHERMAN ANTI-  
TRUST ACT

(Act of July 2, 1890; 26 Stat. 209)

Leave of Court having been first obtained, plaintiffs file herein their First Amended Complaint, and for cause of action allege:

I.

Plaintiffs are, and at all times herein mentioned have been, copartners engaged in business under the fictitious firm name and style of Larry Finley & Associates, and prior to the commencement of the within action, plaintiffs caused to be filed and published a certificate in compliance with the provisions of Sections 2466 and 2468 of the Civil Code of the State of California.

II.

Plaintiffs are now, and ever since the 3rd day of January, [20] 1945, have been, the Operators, under a three-year lease from the City of San Diego, State of California, of a certain Amusement Park in the said City of San Diego known as "Mission Beach Amusement Park," and of the Mission Beach Ballroom, an adjunct of said amusement park; said written lease has approximately two (2) years and nine (9) months to run before the term thereof expires.

III.

One Wayne Dailard is now, and for a long time last past has been, the owner and operator of a certain ballroom in the City of San Diego, California, known as



“Pacific Square”; and said Dailard was for a period of five (5) years and until the 31st day of December, 1944, the Lessee from the City of San Diego and the Operator of said Mission Beach Amusement Park and said ball-room in said Mission Beach Amusement Park.

#### IV.

Defendant, Music Corporation of America is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, having its principal place of business in the City of Chicago, State of Illinois. Said corporation is now, and at all time since the month of April, 1938, has been qualified, licensed and authorized to transact and do business in the State of California, and maintains an office in the City of Beverly Hills, State of California.

Defendant Jules C. Stein is now, and at all times herein mentioned was, the President of defendant Music Corporation of America, and resides in the City of Beverly Hills, California.

Defendant H. E. Bishop is now, and at all times herein mentioned was, an agent, employee and servant of defendant Music Corporation of America, and occupies the position with his said employer known as “orchestra broker.”

Defendant ~~Lawrence Barnett~~ Lawrence R. Barnett [purs to ord 2/8/46 L.B.F.] is now, and at all times herein mentioned was, an agent, employee and servant of defendant Music [21] Corporation of America and the Vice-President in charge of orchestras.

Defendants Doe One, Doe Two, Doe Three, Doe Four, Doe Five, Doe Six, Doe Seven and Doe Eight are agents,

servants, employees, officers and directors of defendant, Music Corporation of America, and are sued herein under said fictitious names for the reason that plaintiffs do not now know their true names or capacities, and plaintiffs ask leave of Court to amend this amended complaint and insert such true names and capacities when the same become ascertained by plaintiffs.

## V.

Defendant Music Corporation of America is engaged in the business of acting as personal representative and employment agent for many persons in the entertainment industry in the United States and is engaged in carrying on an extensive interstate business in the representation as such personal representative and agent for many artists and organizations in various fields of entertainment. In the course of its said representation and agency, said defendant transports between the several states of the United States not only the various members of entertainment groups, dance bands, vocal organizations and the like, but in connection therewith transports between the several states large quantities of costumes, musical instruments, musical arrangements and other paraphernalia of the entertainment business, all of which are equally, if not more important than the personnel involved in such transactions. In particular, said defendant is now, and for many years last past has been, the personal representative and agent for employment purposes of approximately ninety-five percent (95%) of all "name" bands within the United States. By "name" bands, as used herein, is meant dance bands and orchestras who engage in fields of entertainment such as radio, motion pictures, theatrical and ballrooms, and the names of whose leaders

are renowned and well known to the [22] general public throughout the United States and internationally. Included within the "name" bands represented by said defendant are the following: Harry James, Tommy Dorsey, Jan Garber, Ted Fiorito, Gene Krupa, Ted Lewis, Benny Goodman, Kay Kyser, Sammy Kaye, Freddy Martin, Guy Lombardo, Xavier Cugat, Charlie Barnet, Jack Teagarden, Bob Chester, Phil Harris, Skinnay Ennis, Joe Reichman, Louis Armstrong, Les Brown, Bernie Gummis, Al Donahue, Henry King, Harry Owens, and Tommy Tucker.

## VI.

Defendant Music Corporation of America and said Wayne Dailard have heretofore entered into, and there is now in full force and effect, an agreement whereby said Wayne Dailard shall have the exclusive right to employ and use the artists and "name" bands represented by defendant Music Corporation of America within San Diego County, State of California; and defendants and each of them, and said Wayne Dailard, have unlawfully engaged in a combination and conspiracy in violation of the provisions of the Act of Congress passed July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and are engaged in such combination and conspiracy to place unlawful restraint upon the trade and commerce of musical entertainment between the several states and territories of the United States.

## VII.

As an example of some of the acts and things done by defendants, and each of them, and said Wayne Dailard,

in carrying out said unlawful combination and conspiracy, plaintiffs allege that defendants, and each of them, and said Wayne Dailard, have done or caused to be done the following acts and things and adopted the courses of conduct hereinafter described:

A. In or about the month of November, 1944, plaintiffs were advised by the City of San Diego, they had been [23] awarded a lease upon said Mission Beach Amusement Park and Mission Beach Ballroom, for a period of three (3) years commencing January 3, 1945; plaintiffs immediately thereupon commenced negotiations with defendant Music Corporation of America and its officers, agents and employees, hereinabove referred to, for the purpose of obtaining the services of the "name" bands controlled by said defendants at said Mission Beach Ballroom, and defendant Music Corporation of America and its said officers, agents and employees agreed to supply to plaintiffs said "name" bands at prices currently being offered to other ballrooms. In reliance thereon, plaintiffs undertook the preparation of said Mission Beach Ballroom for a grand opening on the 3rd day of February, 1945, and continuously during the months of December, 1944, and January, 1945, requested of defendant and its said agents, servants and employees that they be advised of the identity of the "name" band who would be supplied for said grand opening. Said defendant and its said agents, servants and employees, consistently refused to furnish plaintiffs with the information requested or to offer to them any "name" band, or any band, or any musical entertainment for said purpose.

B. During the early part of the month of February, 1945, plaintiff Larry Finley personally, and through his attorneys, advised defendant Music Corporation of America that plaintiffs intended to commence an action against it under the Sherman Anti-Trust Act, and immediately thereafter and on or about the 23rd day of February, 1945, defendant Music Corporation of America and its agents, servants and employees, offered to book Jack Teagarden at plaintiffs' said ballroom at a price of [24] Twenty-two Hundred and Fifty Dollars (\$2,250), minimum guarantee against fifty per cent (50%) of the gross receipts to be taken in by said ballroom for a two-night engagement. Plaintiffs are informed and believe and therefore allege, that the price at which said defendants quoted Jack Teagarden and his orchestra to plaintiffs was substantially higher than the current price at other ballrooms of the size and character similar to that of plaintiffs for said "name" band.

C. From time to time during the months of January and February, 1945, plaintiff Larry Finley advised defendant Music Corporation of America and its said agents, servants and employees, of various "name" bands he desired to engage for performances at plaintiffs' said ballroom, and in each of said instances, the "name" band indicated by plaintiff to said defendants as desirable was subsequently booked into said ballroom operated by said Wayne Dailard.

D. On or about the 20th day of January, 1945, defendant Music Corporation of America and its agents, servants and employees, offered to book the



King Sisters, a vocal quartet, for plaintiffs' said ballroom, on February 10 and February 11, 1945, at a price of One Thousand Five Hundred Dollars (\$1,500) for both nights. Plaintiffs accepted said offer and daily thereafter requested of said defendants that the contracts for said booking be forwarded to them. Plaintiffs received no reply from said defendants, and on or about the 25th day of January, 1945, plaintiffs were advised by reading an advertisement in the San Diego newspapers, that said King Sisters were booked into said Pacific Square, the ballroom operated by said Wayne Dailard, for an engagement on the [25] 2nd to 4th days of February, 1945.

E. Plaintiffs are informed and believe, and upon such information and belief allege, that as to the few "name" bands not controlled by defendant Music Corporation of America, said defendant and its officers, agents, servants and employees have through means and methods unknown to plaintiffs exerted pressure and influence upon the personal representatives and employment agents for said few remaining "name" bands, compelling them to refrain from and refuse to offer said "name" bands for bookings at plaintiffs' said ballroom other than at prices very substantially higher than the current prices commanded by said "name" bands at other ballrooms of the size and character similar to that of plaintiffs.

F. Plaintiffs are informed and believe, and upon such information and belief allege, that defendant Music Corporation of America has and maintains exclusive contracts for various localities with many other ballrooms, one in each of such localities, similar to the arrangement between said defendant and said Wayne Dailard in the County of San Diego, California; and plaintiffs are further informed and believe, and upon such information and belief allege, that defendant Music Corporation of America, through means and methods unknown to plaintiffs, compels other personal representatives and employment agents to split fees with it upon bookings of clients of said other personal representatives and employment agents in said ballrooms with whom said defendant has exclusive agreements in said various localities.

G. On or about the 27th day of February, 1945, defendant Music Corporation of America and its said agents, servants and employees, offered to book Ted Fiorito and [26] his orchestra at plaintiffs' said ballroom, at and for a price of Two Thousand, Five Hundred Dollars (\$2,500), minimum guarantee against fifty per cent (50%) of the gross receipts for a two-night engagement. Plaintiffs are informed and believe, and upon such information and belief allege that said price so quoted is very substantially in excess of the price currently being asked for such



orchestra of other ballrooms of a size and character similar to that of plaintiffs.

### VIII.

As a result of the combination and conspiracy hereinbefore alleged, and of the various acts done in pursuance thereof by defendants, and each of them, plaintiffs have been unable to obtain first-class musical entertainment and "name" bands for appearances and exhibitions at the said Mission Beach Ballroom at the said Mission Beach Amusement Park in the City of San Diego, California, and have been restricted in their trade and competition with other ballrooms in said City of San Diego; all of which was and is injurious to plaintiffs and excluded plaintiffs from competition in the trade, and because of such inability to compete by reason of the foregoing, plaintiffs have been damaged in that their business has been rendered unprofitable; and will continue to be rendered unprofitable during the remainder of the terms of their said lease: all to their damage in the sum of One Million Dollars (\$1,000,000); and plaintiffs are entitled under the laws of the United States, to wit, Section 7 of the Sherman Law above referred to, to recover three-fold their actual damages, to wit, the sum of Three Million Dollars (\$3,000,000).

### IX.

Plaintiffs, in order to enforce their rights against the defendants, have employed the services of Messrs. Desser, Rau & [27] Christensen, a firm of attorneys in the City

of Los Angeles, State of California, the members of whom are all licensed and authorized to practice before the District Courts of the United States, and under the laws of the United States, to wit, Section 7 of the Sherman Act, plaintiffs are entitled to recover from defendants a reasonable attorneys' fees, and that reasonable attorneys' fees in this action is the sum of One Hundred Thousand Dollars (\$100,000).

X.

There is a diversity of citizenship of the parties in this action, and by reason thereof and by reason of the provisions of Chapter 648 of the United States of 1890 and the Acts amendatory thereto, this Court has jurisdiction of the parties hereto and the subject matter of this action.

Wherefore, plaintiffs pray judgment against the defendants, and each of them, for the sum of One Million Dollars (\$1,000,000) as damages, and that said sum be trebled in accordance with the provisions of Section 7 of the Act of July 2, 1890, 26 Stat. 209; for reasonable attorneys' fees in the sum of One Hundred Thousand Dollars (\$100,000); and for costs of suit herein incurred.

DESSER, RAU & CHRISTENSEN

By Arthur A. Desser

Attorneys for Plaintiffs [28]

[Verified.]

[Endorsed]: Filed Feb. 6, 1946. [29]

DEFENDANTS' REQUESTED INSTRUCTION  
NO. 44

The plaintiffs charge that defendant, Music Corporation, has monopolized trade and commerce in so-called "name" bands. You are instructed that in the eyes of the law and for purposes of applying the federal anti-trust laws, the expression "to monopolize trade and commerce" means "to control it, to exclude others from trade in commodities in such commerce and prevent them from dealing therein in a free market."

You are instructed that the evidence presented in this case is insufficient as a matter of law to establish that Music Corporation has monopolized trade and commerce in so-called "name" bands. Therefore, you shall not give any consideration, whatever, to plaintiffs' charge of monopoly, and on that issue, instruct you to find in favor of the defendants.

Montrose Lumber Co. v. United States, C. C. A.-  
10, 124 F. 2d 573. [30]

DEFENDANTS' REQUESTED INSTRUCTION  
NO. 43

Evidence has been presented to show that Music Corporation of America is one of the so-called "big four" booking agencies or personal service organizations which today represents band leaders throughout the country. You are instructed that such evidence in and of itself is not proof of any violation of the federal antitrust laws, for "the law does not make mere size an offense or the existence of unserted power an offense. . . .

It does not compel competition, nor require all that is possible."

United States v. United States Steel Corporation,  
251 U. S. 417, 451.

United States v. International Harvester Com-  
pany, 274 U. S. 694, 708.

[Endorsed]: Filed Feb. 14, 1946. [31]

---

[Title of District Court and Cause.]

INSTRUCTIONS TO JURY REQUESTED BY  
DEFENDANTS

The defendants herein request the Court to deliver to the jury Defendants' Instructions Nos. 1 to ..... submitted herewith.

FRANK P. DOHERTY  
HAROLD F. COLLINS  
PACHT, PELTON, WARNE, ROSS  
AND BERNARD

By Clore Warne

Attorneys for Defendants [32]

DEFENDANTS' REQUESTED INSTRUCTION  
NO. 35

You are instructed that agreements between Music Corporation of America and Wayne Dailard, which have been introduced in evidence as Defendants' Exhibit Nos. E and F, are lawful agreements which the parties thereto had a legal right to make and to perform.

Therefore, if you find that there were no other agreements and no combination or conspiracy between the defendants and Wayne Dailard, you must return a verdict in favor of the defendants unless you further find that the agreements in evidence were made or performed or used for the purpose and with the intent on the part of the defendants to unreasonably restrain interstate commerce in so-called "name" bands.

[Written]: Not given except as covered elsewhere. McCormick, J. [33]

DEFENDANTS' REQUESTED INSTRUCTION  
No. 37

You are instructed that the labor of a human being is not a commodity of commerce.

Therefore, if you find that the activities on the part of Music Corporation of America and its defendant employees, of which plaintiff complains, consisted solely in the representation of band leaders for employment purposes, and if you further find that the defendants did not engage in such activities for the purpose of restraining interstate commerce in so-called "name" bands in an unreasonable manner, then you shall return a verdict in favor of the defendants.

15 U. S. C. 17.

Hunt v. Crumboch, 325 U. S. 821.

Allen Bradley Co. v. Local Union No. 3, I.B.F.W.,  
325 U. S. 797.

[Written]: Not given except as covered. No application. McCormick, J. [34]

DEFENDANTS' REQUESTED INSTRUCTION  
NO. 49

You are instructed that band leaders, as well as musicians generally, have legal rights in common with other artisans, workers and employees. These rights include the right to organize, to bargain collectively, to prescribe terms and conditions of employment, to fix prices for their personal services, to work or perform for whom they choose, and decline employment at any time or place they choose.

United States v. American Federation of Musicians, D. C. N. D. Ill., 47 F. Supp. 304; aff'd, per curiam.

[Written]: Not given. [Illegible.]

[Endorsed]: Filed Mar. 25, 1946. [35]

---

[Title of District Court and Cause.]

DEFENDANTS REQUEST FOR ADDITIONAL  
INSTRUCTIONS

Defendants Music Corporation of America, H. E. Bishop and Lawrence Barnett request that the Court at this time give the following additional instructions to the jury. Such instructions are presented at this time in accordance with the long established practices in the federal courts as enunciated in the following authorities:

53 Am. Jur. 667, Sections 941, 942, citing United States and Federal Court cases including *Charlton v. Kelly* (C. C. A. 9th), 156 Fed. 433.



Allis v. United States, 155 U. S. 117, 39 L. Ed. 91. [36]

Spurr v. United States, 174 U. S. 728, 43 L. Ed. 1150.

Dated at Los Angeles, California, this 15th day of February, 1946.

FRANK P. DOHERTY  
HAROLD F. COLLINS  
PACHT, PELTON, WARNE, ROSS  
AND BERNHARD

By Clore Warne

Attorneys for Defendants [37]

DEFENDANTS' REQUESTED ADDITIONAL  
INSTRUCTION NO. A:

I have previously instructed you that the law placed upon the plaintiffs the burden of proving by a preponderance of the evidence certain essential facts, namely, the existence of a wrongful combination or conspiracy, the actual imposition of unreasonable restraints of interstate commerce in so-called name bands as a result of such combination or conspiracy, financial loss to the plaintiffs in the operation of Mission Beach Amusement Center which results directly from such unlawful combination or conspiracy and which is determinable without resort to guesswork, conjecture or speculation.

I now instruct you that this burden of proof which is upon plaintiffs requires that they prove by a preponderance of the evidence that all of these facts occurred. In other words, it is not enough that you find that an unlawful combination or conspiracy existed as charged in the com-



plaint and amended complaint, but you must also find that it was effective, so that if you merely find that there was a combination or conspiracy and that it was not the direct cause of any injury to the business or property of the plaintiffs, you must return a verdict in favor of the defendants. Also, if you find that the plaintiffs actually suffered a loss in their operation of the Mission Beach Amusement Center but that such loss was not the direct result of any wrongful conduct on the part of the defendants as charged in the complaint and amended complaint but was due to plaintiffs' method of operation or to economic conditions or to other factors not directly attributable to any wrongful act on the part of the defendants, then your verdict must be in favor of the defendants. [38]

DEFENDANTS' ADDITIONAL REQUESTED  
INSTRUCTION O. C:

If the facts shown by the evidence tend to sustain the inference that the defendants, together with Wayne Dailard, have engaged in a wrongful combination or conspiracy to unlawfully restrain interstate commerce, and also tend equally to sustain the inference that said persons did not so engage, then I instruct you that plaintiffs' claim of wrongful conspiracy has not been established and your verdict must be in favor of the defendants.

Likewise, in any consideration of the subject of damages, if you find that the evidence tends equally to establish two contradictory inferences, one that plaintiffs have suffered loss as a result of an unlawful combination or conspiracy on the part of the defendants and Wayne Dailard as charged, and the other that such loss, if any,

was attributable to other causes and factors and was not directly and proximately caused by wrongful acts of defendants and Wayne Dailard, then you must return a verdict in favor of the defendants.

Schad v. Twentieth Century-Fox Film Corporation, CCA-3, 1943, 136 F. (2d) 991, 996. [39]

DEFENDANTS' ADDITIONAL REQUESTED  
INSTRUCTION NO. D:

In order for you to find the loss, if any, suffered by the plaintiffs in the operation of Mission Beach Amusement Center is recoverable as damages against the defendants or any of them in this case, you must first find that such loss resulted directly and proximately from the alleged wrongful combination and conspiracy between said defendants and Wayne Dailard. Any loss suffered or caused by reason of other factors are not recoverable.

In this connection, you may consider all of the facts proven upon the trial, including plaintiffs' manner and policy of operation of their said business, and the change, if any, of economic and business conditions. [40]

DEFENDANTS' ADDITIONAL REQUESTED  
INSTRUCTION NO. F:

I am giving you certain additional instructions. They are to be considered by you not separate and apart and not as stating any different law than I have otherwise given to you. These instructions are intended only to amplify the other instructions given to you upon the law which is to govern and control as applied by you to the facts proven upon the trial.

[Endorsed]: Filed Feb. 15, 1946. [41]

[Title of District Court and Cause.]

## VERDICT OF THE JURY

We, the Jury in the above entitled cause, find in favor of the plaintiffs, Larry Finley and Miriam Finley, and against the defendants, Music Corporation of America, a Delaware corporation, H. E. Bishop and Lawrence R. Barnett, and assess the damages in the sum of \$55,500.00 *Dollars*.

Dated: Los Angeles, California, February 15, 1946.

A. W. HUDSON

Foreman of the Jury

[Endorsed]: Filed Feb. 15, 1946. [42]

---

[Title of District Court and Cause.]

## APPLICATION FOR ATTORNEYS' FEES, ATTORNEYS FOR THE PLAINTIFFS

To the Honorable Paul J. McCormick, Judge of the District Court:

The petition of Messrs. Desser, Rau and Christensen respectfully shows and alleges:

### I.

That they are the attorneys for the plaintiffs herein and were retained in January, 1945, by plaintiffs with reference to plaintiffs' attempts to obtain band bookings for plaintiffs' ballroom at Mission Beach Amusement Park, San Diego, California. During the month of February, 1945, plaintiffs' situation with respect to the obtaining of name bands became desperate, inasmuch as

Music Corporation of America and its officers and agents, having theretofore promised to supply bands to plaintiffs, refused to do so, and Arthur A. Desser, senior member of Desser, Rau and Christensen, engaged in many conversations and consultations with [43] Mr. Joseph Ross, counsel of Music Corporation of America, relative to the matter. Said conferences and conversations resulted in naught, and it became increasingly apparent that it would be necessary for plaintiffs to commence an action under the Sherman Anti-Trust Act to protect their rights.

## II.

Accordingly, during the early part of the month of March, 1945, Messrs. Jack L. Rau and William Christensen, members of the firm of Desser, Rau and Christensen, conducted exhaustive and extensive research into the law governing the situation and discussing the matter with Mr. Finley; and at the conclusion of their discussions and research, prepared the original complaint herein, which was filed on March 20, 1945.

## III.

Thereafter, during April, May and June, Mr. Desser had numerous additional conferences with Mr. Ross, and Mr. Rau and Mr. Christensen conferred frequently with Mr. Finley and witnesses.

## IV.

The defendants filed a motion to dismiss, a motion to strike and a motion for a more definite statement of claim,

which was set for hearing on June 21, 1945. During the month of June, Mr. Rau and Mr. Christensen analyzed said motions, conducted further research and prepared a memorandum of points and authorities in opposition thereto, and had additional conferences with Mr. Finley. On June 21, Mr. Christensen was required to appear before Your Honor in opposition to said motions and successfully opposed the same.

V.

Thereafter counsel prepared affidavits and notices for the taking of depositions of various parties to the action and prepared for the taking of said depositions during the months of July and August; and on August 8th, 9th and 10th, Mr. Rau took the [44] depositions of Messrs. Stein, Bishop and Barnett, and on August 27th and 29th took the depositions of Harold Howard and Wayne Dailard, the deposition of Mr. Dailard being taken at San Diego, California, and necessitating a trip to that City for that purpose by Mr. Rau.

VI.

During the month of September, defendants filed certain written interrogatories requiring written answers thereto by plaintiff, Larry Finley, and during that month, Messrs. Desser, Rau and Christensen conferred frequently with Mr. Finley and devoted a substantial amount of time to the preparation of the answers to said interrogatories. During the same month, Mr. Rau appeared before Your Honor at the pre-trial hearing of this case.

## VII.

During the month of October, 1945, further conferences were held with Mr. Finley, and on October 8th and 9th, Mr. Finley's deposition was taken in the office of Messrs. Pacht, Pelton, Warne, Ross and Bernhard. During the same month, Mr. Rau prepared documents to take the deposition of Mr. Kenneth Later at New York City, and in November, Mr. Later's deposition was taken at New York by Mr. Desser and Mr. Armand Lackenbach of New York City, who was associated for that purpose.

## VIII.

During the latter part of November, defendants served upon plaintiff a very lengthy and involved motion for summary judgment and accompanied the same with an extensive brief in support thereof. During the first week of December, Mr. Christensen and Mr. F. Filmore Jaffe, an attorney employed in the office of Desser, Rau and Christensen, devoted a great deal of time to the preparation of the affidavit filed in opposition to said motion and the points and authorities filed in opposition thereto; and on December 7th, Mr. Christensen, Mr. Jaffe and Mr. Louis M. Karp, [45] another attorney employed in petitioners' offices, appeared before Your Honor to argue in opposition to said motion.

## IX.

During the remainder of December and during January, 1946, Messrs. Christensen, Jaffe and Karp had



numerous conferences, both in Los Angeles and San Diego, preparatory to the trial of the action.

### X.

Between November 15, 1945, and January 25, 1946, Mr. Jaffe devoted 45 days to the analysis of the case and the pleadings, facts, the law and the preparation of plaintiffs' trial brief.

### XI.

The trial of the action commenced on January 29, 1946, and continued thereafter for 13 Court days, during each of which Messrs. Christensen, Jaffe and Karp attended the daily sessions of the Court and participated in the trial.

### XII.

At the conclusion of each day of the trial, Messrs. Christensen, Jaffe and Karp, and on some occasions Desser and Rau, participated in conferences with Mr. Finley and other witnesses, each of said conferences lasting at least 2 hours and on some occasions 3 hours.

### XIII.

On February 12, 1946, Messrs. Christensen and Jaffe prepared their arguments to the jury.

### XIV.

Attached hereto, identified as Exhibit "A", and by this reference incorporated herein the same as though here fully set forth, is the schedule of the actual time ex-



pended by counsel for the plaintiffs, and their various attorney employees, in the performance of the legal services hereinbefore described. Said schedule has been prepared in such a manner so that the time [46] devoted by the members of the firm is referred to as the Seniors' time, and the time devoted by employees of the firm is referred to as Juniors' time. A day is computed on the basis of 7 hours; and where portions of the day were spent and the time computed in hours, the total of such hours has been computed in days; and as will appear from said Exhibit "A", the total Senior time thus spent is  $51\frac{3}{4}$  days and the total Junior time thus spent is  $90\frac{1}{2}$  days.

Petitioners' fees, while to some extent flexible, are ordinarily predicated upon the basis of \$200.00 per diem for Seniors' time, and \$100.00 per diem for Juniors' time. Applying this schedule to the total of days devoted to the above entitled action, the value of petitioners' services is \$19,400.00, and petitioners allege said sum to be the fair and reasonable value of said services so rendered.

Wherefore, petitioners pray that an order be made and entered herein allowing to plaintifffs the sum of \$19,400.00 as attorneys' fees, said sum to be added to and included in the judgment to be entered herein.

DESSER, RAU & CHRISTENSEN

By William Christensen

Petitioners [47]

EXHIBIT "A"

<u>Date</u>		<u>Subject</u>	<u>Services Rendered By</u>	<u>Time</u>	
				<u>Seniors Days</u>	<u>Juniors Days Hrs.</u>
<u>1945</u>					
Feb.	2	Telephone conference with Joseph Ross	Desser		¼
Feb.	5	Telephone conference with Joseph Ross	Desser		¼
Feb.	13	Telephone conference with Joseph Ross	Desser		¼
Feb.	14	Telephone conference with Joseph Ross	Desser		¼
Feb.	14	Telephone conference with Joseph Ross	Desser		¼
Feb.	14	Conference with Joseph Ross	Desser		½
Feb.	23	Telephone conference with Joseph Ross	Desser		¼
Mar.	13	Research in prepara- tion of complaint	Rau Christensen	5	
Mar.	19	Correlation of Evi- dence re Complaint	Christensen	1	

(Exhibit "A")

<u>Date</u>	<u>Subject</u>	<u>Services Rendered By</u>	<u>Time</u>	
			<u>Seniors Days</u>	<u>Junior Days</u>
Mar. 20	Drafting & filing of Complaint	Rau	$\frac{1}{2}$	
Apr. 9	Telephone conference with Joseph Ross	Desser		$\frac{1}{4}$
Apr. 10	Telephone conference with Joseph Ross	Desser		$\frac{1}{4}$
Apr. 17	Telephone conference with Joseph Ross	Desser		$\frac{1}{4}$
Apr. 23	Telephone conference with Joseph Ross	Desser		$\frac{1}{4}$
May 1	Telephone conference with Joseph Ross	Desser		$\frac{1}{4}$
May 21	Conference with Larry Finley	Rau	1	
May 23	Conference with witnesses	Rau	2	
May 24	Conference with Larry Finley	Rau	1	
Carried Fwd.			$6\frac{1}{2}$	$7\frac{1}{4}$

Exhibit "A")

Date	Subject	Services Rendered By	Time		Juniors Days Hrs.
			Seniors Days	Hrs.	
	Brought Fwd.		6½	7¼	
ay 25	Conference with Larry Finley & witnesses	Christensen		2½	
ay 26	Conference with witnesses	Christensen		2	
ay 28	Conference with witnesses	Rau		2	
ay 29	Conference with Larry Finley	Rau		2	
ne 5	Conference with Larry Finley & witnesses	Christensen		5	
		Rau		5	
ne 5	Analysis & research for memorandum and points and authorities in opposition to mo- tion to dismiss, mo- tion to strike, and motion for more defi- nite statement of claim	Christensen	1½		
		Rau	1½		

(Exhibit "A")

<u>Date</u>	<u>Subject</u>	<u>Services Rendered By</u>	<u>Time</u>	
			<u>Seniors Days</u>	<u>Juni Hrs. Days</u>
June 6	Conference with Larry Finley	Christensen	2	
June 21	Appearance re motion to dismiss, motion to strike and motion for more definite statement of claim	Christensen	1/2	
June 22	Preparataion of No- tice of Ruling	Rau	1	
July 10	Notice of Taking Deposition	Rau	1	
July 19	Affidavit for Sub- poena Duces Tecum	Rau	1	
July 19	Affidavit for Sub- poena re Deposition	Rau	1	
August 6	Preparation for Taking Deposition	Rau	1/2	
August 7	Preparation for Taking Deposition	Rau	1/2	
Carried Fwd.			11	31 3/4

Exhibit "A")

<u>Date</u>	<u>Subject</u>	<u>Services Rendered By</u>	<u>Time</u>			
			<u>Seniors</u>		<u>Juniors</u>	
			<u>Days</u>	<u>Hrs.</u>	<u>Days</u>	<u>Hrs.</u>
	Brought Fwd.		11	31¾		
Aug. 8	Jules C. Stein Deposition	Rau	1			
Aug. 9	Harold Eames Bishop Deposition	Rau	¾			
Aug. 9	Lawrence R. Barnett Deposition	Rau		3		
Aug. 10	Lawrence R. Barnett Deposition	Rau	½			
Aug. 13	Conference with Larry Finley	Desser		2		
Aug. 27	Harold Howard Deposition	Rau		2		
Aug. 29	Wayne Dailard Deposition	Rau	1			
Sept. 20	Preparation and drafting objections to interrogatories; notice of motion to sustain objections	Rau		6		

(Exhibit "A")

<u>Date</u>	<u>Subject</u>	<u>Services Rendered By</u>	<u>Time</u>		<u>Junior Days</u>
			<u>Seniors Days</u>	<u>Hrs.</u>	
	to interrogatories; Memorandum of Points and Authori- ties in Support of Motion to interroga- tories; Motion to sustain objections to interrogatories				
Sept. 26	Conference with Larry Finley	Desser Rau Christensen	$\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$		
Sept. 27	Conference with Larry Finley	Desser Rau Christensen	$\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$		
Sept. 28	Appearance re Pre-trial hearing	Rau	$\frac{1}{2}$		
Sept. 29	Conference with Larry Finley	Desser Rau Christensen	$\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$		
Oct. 1	Conference with Larry Finley	Rau		1	
Carried Fwd.			<hr/>	<hr/>	
			19 $\frac{1}{4}$	45 $\frac{3}{4}$	



Exhibit "A")

<u>Date</u>	<u>Subject</u>	<u>Services Rendered By</u>	<u>Time</u>	
			<u>Seniors Days</u>	<u>Juniors Hrs. Days Hrs.</u>
	Brought Fwd.		19¼	45¾
8	Larry Finley Deposition	Rau	2	
17	Preparation & drafting notice of taking deposition; notice of motion for order directing the issuance of commission to take deposition; affidavit in support of motion for order directing the issuance of commission to take deposition; motion for issuance of commission to take deposition	Rau	½	
21	Kenneth Later Deposition	Desser Lackenbach	1 1	
5	Preparation and drafting affidavit in opposition to	Christensen	2	

(Exhibit "A")

<u>Date</u>	<u>Subject</u>	<u>Services Rendered By</u>	<u>Time</u>		<u>Junior Days</u>
			<u>Seniors Days</u>	<u>Hrs.</u>	
	defendant's motion for summary judgment				
Dec. 5	Research and preparation of points and authorities in support of plaintiff's affidavit in opposition to defendants' motion for summary judgment	Jaffe			6
Dec. 7	Appearance re Motion for summary judgment	Christensen Jaffe Karp	2		
Dec. 19	Conference with witnesses	Christensen	2		
Dec. 21	Appearance re Change of Venue	Christensen Jaffee Karp	1		
Dec. 24	Conference with witnesses	Karp			
Carried Fwd.			23¾	52¾	6

Exhibit "A")

<u>Date</u>	<u>Subject</u>	<u>Services Rendered By</u>	<u>Time</u>			
			<u>Seniors</u>		<u>Juniors</u>	
			<u>Days</u>	<u>Hrs.</u>	<u>Days</u>	<u>Hrs.</u>
946	Brought Fwd.		23	3/4	52	3/4
					6	10
a. 7	Conference with witnesses	Jaffe				2
a. 10	Conference with witnesses	Karp				2
a. 16	Interview with witnesses in San Diego	Christensen	2			
& 17		Jaffe			2	
a. 23	Conference with witnesses	Jaffe				3
		Karp				3
Nov. 15						
to)						
a. 25	Plaintiff's Trial Brief	Jaffe			45	
a. 29	Appearance re Trial	Christensen	13			
to		Jaffe			13	
b. 15		Karp			13	
a. 29	Conference with Larry Finley and witnesses	Christensen		2		
		Jaffe				2
		Karp				2
		Desser		2		

(Exhibit "A")

<u>Date</u>	<u>Subject</u>	<u>Services Rendered By</u>	<u>Time</u>		<u>Junior Days H</u>
			<u>Seniors Days</u>	<u>Hrs.</u>	
Jan. 30	Conference with Larry Finley and witnesses	Christensen Jaffe Rau Karp		2  2	
Jan. 31	Conference with Larry Finley and witnesses	Christensen Jaffe Desser Rau Karp		2  1 1	
Feb. 1	Conference with Larry Finley and witnesses	Christensen Jaffe Karp		2	
Feb. 2	Conference with Larry Finley and witnesses	Christensen Jaffe Karp		3	
Feb. 4	Conference with Larry Finley and witnesses	Christensen Jaffe Karp		2	
Carried Fwd.			38¾	71¾	79

Exhibit "A")

Date	Subject	Services Rendered By	Time			
			Seniors		Juniors	
			Days	Hrs.	Days	Hrs.
	Brought Fwd.		38	¾	71	¾
b. 5	Conference with Larry Finley and witnesses	Christensen Jaffe Karp		2		2
b. 6	Conference with Larry Finley and witnesses	Christensen Jaffe Karp		2		2
b. 7	Conference with Larry Finley and witnesses	Christensen Jaffe Karp		2		2
b. 8	Conference with Larry Finley and witnesses	Christensen Jaffe Karp		2		2
b. 10	Conference with Larry Finley and witnesses	Christensen Desser Jaffe Karp		2 1		2 2
b. 11	Conference with Larry Finley and witnesses	Christensen Jaffe Karp		2		2
b. 12	Conference with Larry Finley and witnesses	Christensen Jaffe Karp		2		2

(Exhibit "A")

<u>Date</u>	<u>Subject</u>	<u>Services Rendered By</u>	<u>Time</u>	
			<u>Seniors Days</u>	<u>Juniors Days Hrs.</u>
Feb. 13	Conference with Larry Finley and witnesses	Christensen Jaffe Karp	2	
Feb. 12	Preparation of Arguments	Christensen Jaffe	3	
Total			38¾	91¾ 79 8

RECAPITULATION

Seniors' Time .....	38¾ days	
plus 91¾ hrs =	13 days	
Total	51¾ days @ \$200.00—	
		\$10,350.00
Juniors' Time .....	79 days	
plus 82 hours =	11½ days	
	90½ days @ \$100.00—	
		\$ 9,050.00
		\$19,400.00

[53]

[Verified.]

Received copy of the within application this 21 day of February 1946. Pacht, Pelton, Warne, Ross & Bernhard, June Smolen, Attorneys for Defendants.

[Endorsed]: Filed Feb. 25, 1946. [54]

[Minutes: Thursday, March 21, 1946]

Present: The Honorable Paul J. McCormick, District Judge.

This cause coming on for hearing on (1) objections to application for attorneys' fees for plaintiffs, solely as to specification 4, on lines 9 to 13, inclusive, of page 2 of defendants' specification of objection; and (2) motion of defendant Music Corporation of America to strike from the files plaintiffs' petition for inclusion of Mandatory Injunction in Judgment to be entered; Wm. Christensen, Esq., appearing for the plaintiffs; Clore Warne, Esq., appearing for the defendants; both sides answer ready and it is ordered that counsel proceed.

Attorney Christensen argues in support of plaintiffs' petition for inclusion of Mandatory Injunction in Judgment. Attorney Warne argues in opposition. Attorney Christensen makes reply statement.

It is ordered that the objections of defendants to the petition for inclusion of mandatory injunction in the judgment to be entered be sustained, and ordered that said petition be denied without prejudice.

At 10:45 A. M. Attorney Warne argues re objections to application for attorneys' fees for plaintiffs. Attorney Christensen makes reply statement.

It is ordered that a fee of \$7500.00 be allowed plaintiffs at this time, to be included in the judgment, counsel for plaintiffs to prepare judgment. [55]



In the District Court of the United States for the  
Southern District of California

Central Division

No. 4328-M-Civil

LARRY FINLEY and MIRIAM FINLEY,

Plaintiffs,

vs.

MUSIC CORPORATION OF AMERICA, a Delaware corporation; H. E. BISHOP; LAWRENCE BARNETT; etc., et al.,

Defendants.

### JUDGMENT

The above entitled cause came on regularly for trial on February 1, 1946, in the above entitled court before the Honorable Paul J. McCormick, judge presiding, Messrs. Desser, Rau and Christensen, by Wm. Christensen, F. Filmore Jaffe, and Louis M. Karp, appearing as attorneys for plaintiffs, and Messrs. Pacht, Pelton, Warne, Ross and Bernhard, by Clore Warne, and Frank P. Dougherty and Harold P. Collins appearing as attorneys for defendants, and a trial by jury having been duly had, and the jury having rendered a verdict in favor of the plaintiffs and against the defendants, Music Corporation of America, a Delaware corporation, H. E. Bishop and Lawrence Barnett, for Fifty-Five Thousand, Five Hundred (\$55,500.00) Dollars; thereafter and on March 21,

1946, plaintiffs' petition for the allowance of a reasonable attorneys' fees for the [56] institution and prosecution of the above entitled cause against said defendants and the court, having determined that the sum of Seven Thousand, Five Hundred (\$7,500.00) Dollars is a reasonable sum to be allowed plaintiffs as and for such attorneys' fees,

It Is Ordered, Adjudged and Decreed that plaintiffs do have and recover from defendants Music Corporation of America, a Delaware corporation, H. E. Bishop and Lawrence Barnett, the sum of Fifty-Five Thousand, Five Hundred (\$55,500.00) Dollars and the further sum of Seven Thousand, Five Hundred (\$7,500.00) Dollars attorneys' fees in this cause, together with costs taxed at ..... (\$1592.85) Dollars.

Dated: April 9th, 1946.

PAUL J. McCORMICK

Judge

Disapproved [CW]

~~Approved~~ as to form this 3rd day of April, 1946. Pacht, Pelton, Warne, Ross and Bernhard; Frank P. Dougherty and Harold F. Collins, by Clore Warne, Attorneys for Defendants.

Judgment entered Apr. 9, 1946. Docketed Apr. 9, 1946. C. O. Book 37, page 658. Edmund L. Smith, Clerk; by R. B. Clifton, Deputy.

[Endorsed]: Filed Apr. 9, 1946. [57]

[Title of District Court and Cause.]

MEMORANDUM OF COSTS AND  
DISBURSEMENTS

## DISBURSEMENTS

1945

Mar. 20	Filing Fee, Complaint	\$ 15.00
July 21	Service of Subpoena, Jules C. Stein H. E. Bishop Lawrence Barnett	5.00
Aug. 3	Service of Subpoena Duces Tecum Jules C. Stein	8.00
Aug. 14	Service of Subpoena, Wayne Dailard	2.50
Aug. 17	Service of Subpoena, Harold Howard	3.50
Aug. 29	Deposition of Wayne Dailard	30.25
Oct. 1	Pre-Trial Transcript	14.70
Oct. 26	Depositions: H. Eames Bishop Lawrence Barnett Jules C. Stein Harold Howard Larry Finley	383.65
		[58]

1945

Nov. 28	Notary fee re Deposition of Ken Later	\$ 15.00
Nov. 28	Deposition of Kenneth Later	45.75

1946

Feb.	5	Daily Transcript, Week ending Feb. 1, 1946	387.80
Feb.	11	Daily Transcript, Week ending Feb. 8, 1946	457.80
Feb.	13	Jury Meals	30.00
Feb.	20	Service of Subpoena: H. Eames Bishop Lawrence Barnett Jules C. Stein Harold Howard Tom Hamlon Ralph Wonders Dick Webster Billy McDonald Larry Shea Bernie Cohen Harold Jovien Al Jarvis Carlos Gastel Isabel Katelman Charles Wick	60.00
		Notary Fees	3.50
Feb.	15	Daily Transcript, Week ending Feb. 15, 1946	155.40
Apr.	9	Attorneys' Docket Fees (Sec. 824 R.S.) (Sec. 571-2 Title 28 U.S.C.	20.00
Total			<hr/> \$1,592.85

[Written]: Taxed pms stip

[Verified.] [59]

To Pacht, Pelton, Warne, Ross & Bernhard

Union Bank Building, Los Angeles, California

You will please take notice that on Friday, the 12th day of April, 1946, at the hour of 10:00 o'clock a. m., plaintiffs will apply to the Clerk of said Court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

DESSER, RAU CHRISTENSEN

By F. Filmore Jaffe

Attorneys for Plaintiffs [60]

Received copy of the within Memorandum of Costs and Disbursements this 10th day of April, 1946. Pacht, Pelton, Warne, Ross Bernhard, June Smolen, Attorneys for Defendants.

[Endorsed]: Filed Apr. 11, 1946. [61]

---

[Title of District Court and Cause.]

### STIPULATION

It Is Hereby Stipulated between counsel for plaintiffs and defendants as follows:

1) That there may be taxed as costs in favor of plaintiffs on the judgment now of record, in addition to the other items mentioned in the costs bill, those specific items to which objections have been raised by defendants, to wit:

"Feb. 5	Daily Transcript, Week ending Feb. 1, 1946	\$387.80"
"Feb. 11	Daily Transcript, Week ending Feb. 8, 1946	457.80"
"Feb. 15	Daily Transcript, Week ending Feb. 15, 1946	155.40"

2) That plaintiffs acknowledge receipt of a copy of said Daily Transcript and that on any appeal in said action, said copy of the transcript so received by plaintiffs shall be deemed to be a [62] copy available for the use of plaintiffs on the appeal, and that it will be sufficient for appellant to file only one copy of the Reporter's Transcript with the Clerk in order to constitute compliance with Rule 75, Federal Rules of Civil Procedure.

3) That the provisions of this stipulation allowing said costs to be taxed in favor of plaintiffs shall obtain and be reciprocal and shall constitute authority for the taxing of like items as costs in the event of any ultimate judgment in favor of defendants.

Dated: April 15, 1946.

DESSER, RAU & CHRISTENSEN

By F. Filmore Jaffe

Attorneys for Plaintiffs

PACHT, PELTON, WARNE, ROSS  
& BERNHARD

By Clore Warne

Attorneys for Said Defendants

[Endorsed]: Filed Apr. 16, 1946. [63]

[Title of District Court and Cause.]

MOTION OF DEFENDANTS MUSIC CORPORATION OF AMERICA, H. E. BISHOP AND LAWRENCE BARNETT FOR JUDGMENT NOTWITHSTANDING THE VERDICT

Defendants Music Corporation of America, H. E. Bishop and Lawrence Barnett, and each of them, move said court for an order vacating the verdict of the jury heretofore rendered and the judgment entered thereon, and each of them, and to set aside said verdict and judgment in accordance with their motion heretofore made for a directed verdict.

Said motion is made upon the grounds asserted, urged and set forth in said defendants' motion for a directed verdict made at the close of all of the evidence, including the grounds set forth in their motion filed and made at the close of plaintiffs' evidence and upon each and all of the grounds stated in said motion.

Said motion is made and based upon the pleadings, record and files in said cause, the verdict and judgment entered [64] therein and upon the reporter's stenographic transcript of evidence and the exhibits filed in said cause, and upon a brief and points and authorities to be hereafter filed.

This motion is made and presented to the court joined with a motion for a new trial prayed for in the alternative, and defendants pray that in the event this motion for a directed verdict be denied, the court then consider and grant defendants' motion for a new trial.



Dated: this 17th day of April, 1946.

FRANK P. DOHERTY

HAROLD F. COLLINS

PACHT, PELTON, WARNE, ROSS

& BERNHARD

By Clore Warne

Attorneys for Said Defendants [65]

Received copy of the within Motion for Judgment Notwithstanding, etc., this 18 day of April, 1946. Desser, Rau & Christensen, Attorneys for Plaintiffs.

[Endorsed]: Filed Apr. 18, 1946. [66]

---

[Title of District Court and Cause.]

## DEFENDANTS' MOTION FOR NEW TRIAL

Defendants, Music Corporation of America, H. E. Bishop and Lawrence Barnett, and each of them, move said Court for an order vacating the verdict of the jury and the judgment entered thereon, and move for a new trial of said action.

This motion for new trial is joined with said defendants' motion for judgment notwithstanding the verdict, and which said motion defendants pray be first considered and ruled upon, and in the event it is denied that the Court then consider and grant this motion for a new trial.

Said motion is made upon the following grounds:

- 1) Irregularity in the proceedings of the Court, jury and adverse party and abuse of discretion of

the said Court by which said defendants were prevented from having a fair trial; [67]

- 2) Misconduct of the jury;
- 3) Excessive damages appearing to have been given under the influence of passion or prejudice;
- 4) Insufficiency of the evidence to justify the verdict of the jury;
- 5) Error in law occurring at the trial.

Said motion will be made and based upon the records, pleadings and files of said cause and upon the minutes of the Court, including the Reporter's Transcript and the exhibits in said cause, and upon the brief and points and authorities hereafter to be filed.

Defendants specify as error in law occurring at the trial the following:

Specification of Error No. 1: Error in sustaining plaintiffs' objection to certain questions propounded upon the cross-examination by defendants of plaintiffs' witness Lawrence Mirken (which said questions and the ruling of the Court thereon appear at pages 1345 and 1346 of the Reporter's Transcript).

Specification of Error No. 2: Improper admission of testimony concerning alleged immoral and other conditions at Mission Beach Amusement Park when it was under the operation of Wayne Dailard prior to the period of the alleged conspiracy, this consisting of the testimony of plaintiffs' witnesses, Knox, Austin, Crary, Calland, Weston, and certain portions of the testimony of plaintiff Larry Finley, all of which testimony was admitted over the objection of defendants.

Specification of Error No. 3: Error in admitting into evidence a document denominated "Plaintiffs' Bid", plaintiffs' Exhibit 8, together with accompanying letters of commendation of plaintiff Larry Finley, all over the objection of defendants.

Specification of Error No. 4: Error in admitting into evidence over objection of defendants the testimony and evidence of earnings and of losses of plaintiffs occurring after March 20, 1945, [68] the date of the commencement of said action.

Specification of Error No. 5: Error in admitting into evidence over the objection of defendants of testimony of Wayne Dailard and evidence concerning the profits accruing to him and his partner Wakelin in the operation of Mission Beach Amusement Park and Ballroom prior to January 1, 1945.

Specification of Error No. 6: Error of the Court in refusing to grant defendants' motion to strike said evidence last mentioned.

Specification of Error No. 7: Error in admitting into evidence over the objection of defendants testimony of Wayne Dailard and evidence of and concerning the profits made by said Wayne Dailard in the operation of Pacific Square Ballroom for the years 1944 and in part the year 1945.

Specification of Error No. 8: Denial of defendants' motion to strike said evidence last mentioned.

Specification of Error No. 9: Error of the Court in instructing the jury, in giving certain instructions requested by plaintiffs and in refusing to give certain instructions requested by defendants, all duly over the objec-

tions of defendants, with exceptions saved. The specific instructions, as to which error is urged, are set forth under designations as follows:

a) There is denominated "Instruction Errors 1 to 7" and which consist of error in the giving of certain instructions requested by plaintiffs as follows:

No. 1: Plaintiffs' requested instruction No. 23.

No. 2: Plaintiffs' requested instruction No. 24.

No. 3: Plaintiffs' requested instruction No. 1.

No. 4: Plaintiffs' requested instruction No. 2.

No. 5: Plaintiffs' requested instruction No. 29.

No. 6: Plaintiffs' requested instruction No. 28.

No. 7: Plaintiffs' requested instruction No. 18. [69] (all of which appear in the Reporter's Transcript, page 1403, line 21, to and including page 1404, line 13).

b) Error in refusing to give defendants' requested instruction No. 44.

This is denominated "Instruction Error No. 8."

c) Error in giving its own instruction, being a modification of a defendants' requested instruction, as the same appears in Reporter's Transcript, page 1410, lines 2 to 9.

This is denominated "Instruction Error No. 9."

d) Error in giving defendants' requested instruction No. 5 as it appears in Reporter's Transcript, page 1410, line 10 et seq.

This is denominated "Instruction Error No. 10."

e) Error in instructing the jury by giving plaintiffs' requested instruction No. 15 as it appears in Reporter's Transcript, page 1411, line 23.

This is denominated "Instruction Error No. 11."

Defendants specify the particulars wherein the evidence is insufficient to support the verdict of the jury as follows:

I. The evidence does not support and/or sustain the implied and necessary finding that the defendants, or any of them, restrained interstate commerce within the meaning of the anti-trust laws of the United States, either as alleged in the plaintiffs' amended complaint or otherwise.

II. The evidence does not support and/or sustain the implied and necessary finding that there was any trade or commerce, within the meaning of the anti-trust laws of the United States which was the object or subject of any restraint on the part of defendants or any of them, either as alleged in the amended complaint or otherwise. [70]

III. The evidence does not support and/or sustain the implied and necessary finding that defendants monopolized, or tended or attempted to monopolize the business of musical entertainment, and/or the business of the playing of "name" bands in violation of or within the meaning of the anti-trust laws of the United States, either as alleged in plaintiffs' amended complaint or otherwise.

IV. The evidence does not support and/or sustain the implied and necessary finding that the defendants, Music Corporation of America, H. E. Bishop and Lawrence Barnett, contracted, conspired or combined to re-

strain interstate commerce within the meaning of the anti-trust laws of the United States, either as alleged in plaintiffs' amended complaint or otherwise.

V. The evidence does not support and/or sustain the implied and necessary finding of any unreasonable restraint of interstate commerce within the meaning of the anti-trust laws of the United States, either as alleged in plaintiffs' amended complaint or otherwise.

VI. The evidence does not support and/or sustain the implied and necessary finding that any damages, or damages in the sum of \$18,500, or in any other sum or amount, were suffered or sustained by plaintiffs as a result of any restraint of interstate commerce within the meaning of the anti-trust laws of the United States, or by reason of any acts or conduct on behalf of said defendants, or any of them, either as alleged in plaintiffs' amended complaint or otherwise.

Dated: April 17th, 1946.

FRANK P. DOHERTY

HAROLD F. COLLINS

PACHT, PELTON, WARNE, ROSS  
& BERNHARD

By Clore Warne

Attorneys for Said Defendants [71]

Received Copy of the within Motion for New Trial this 18 day of April, 1946. Dessler, Rau & Christensen, Attorneys for Plaintiffs.

[Endorsed]: Filed Apr. 18, 1946. [72]



[Title of District Court and Cause.]

PARTIAL RULING ON DEFENDANTS' MOTIONS  
FOR JUDGMENT, NOTWITHSTANDING THE  
VERDICT OF THE JURY, AND FOR NEW  
TRIAL

A review of the record and a study of the briefs on the defendants' motion for judgment, notwithstanding the verdict of the jury, and for new trial, have shown no cause to disturb the findings and verdict of the jury or the judgment herein except possibly upon Point 3, page 97, line 7, to page 110 of defendants' printed brief filed herein April 24, 1946.

As to such sole question of the jury's estimate and assessment of the pecuniary damages to plaintiffs, the court will on Tuesday, June 11, 1946, at 10:00 A. M., hear such further restricted oral argument as respective counsel may present. Two hours being allowed. One hour on each side. Plaintiffs to open and close.

See *Keogh v. C&W Ry. Co.*, 260 U. S. 156; *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439 at 453. Cf. *Bigelow v. R.K.O. Radio Pictures*, 90 L. Ed. (Adv. Sh.) 579. (Feb. 25, 1946.)

Dated June 4, 1946.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed Jun. 4, 1946. [73]



[Title of District Court and Cause.]

MEMORANDUM OF CONCLUSIONS ON DEFENDANTS' MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICT OF THE JURY AND FOR NEW TRIAL

McCormick, District Judge.

Plaintiffs sue under Section 15, Title 15, United States Code, for damages, alleging injury to their business and property by reason of interstate activities of defendants violative of Sections 1 and 2 of the Antitrust Laws of the United States. Sections 1 and 2, Title 15, U. S. C. A.

The specific charges relate to a contract and combination between defendants and one Wayne Dailard to restrain and to monopolize interstate trade and commerce in the public entertainment field wherein so-called "name bands" are engaged and utilized in commercial ball rooms and dance halls.

The cause was tried to a jury. At the conclusion of an approximate ten days' trial a general verdict was rendered for the plaintiffs and against the defendants named above, wherein treble damages were awarded to the plaintiffs in the sum of \$55,500.00. Subsequently, and pursuant to Section 15, *supra*, the court, after a hearing, allowed costs of suit, including a reasonable attorney's fee, in the aggregate sum of \$9092.85. Thereafter judgment was accordingly entered and docketed.

Defendants, pursuant to Rule 50, F. R. C. P., have [74] filed and presented their motions for judgment in their favor notwithstanding the verdict of the jury, or, in the alternative, for a new trial. The court after considering

the briefs of the respective parties entered herein a partial ruling wherein the court found that no cause had been shown which warranted or justified any disturbance of the findings and verdict of the jury save the possibility that under the rules enunciated by the Supreme Court in *Keogh v. C. & N. W. Ry. Co.*, 260 U. S. 156, (1922), and reiterated in *Georgia v. Pennsylvania R. Co.*, 324 U. S. at page 453, and earlier established in *Central Coal & Coke Co. et al. v. Hartman*, (C. C. A. 8, 1901), 111 F. 96, the jury's fixation of the damages for the injury to the plaintiffs by reason of defendants' wrongdoing does not conform to the yardstick of certainty required by the decisions of the courts of the United States.

Counsel for the parties have presented further arguments upon the reserved question. We are constrained by the weight of prevailing authority to conclude that even under the liberalized application by the Supreme Court of the rules pertaining to damages per se in actions relating to activities forbidden by the Antitrust laws, such as those found by the jury in this action, the evidence in the record before us falls short of the legally required certainty. Cf. *Bigelow v. RKO Radio Pictures*, 90 L. Ed., (Adv.' Sheet 579, February 25, 1946).

The record indicates that probably the jury's "expression in figures" of the treble damages at \$55,500.00 is based upon evidence that in the year 1944 Wayne Dailard, the predecessor of the plaintiffs in the conduct and operation of the Mission Beach Amusement Center and ballroom, as stated in defendants' brief on the motions before us, showed [75] a profit therefrom of approximately \$74,000.00, and that 25% thereof was allocable to the ballroom. Such a deduction, however, is conjectural and

based upon too insecure support under the record to sufficiently fix the damages to the plaintiffs so as to bring the award of the jury under the standard established by the decisions.

Having reviewed all of the evidence before the court on the issue of monetary damages, exclusive of other factors of injury to the plaintiffs, we believe it to be legally inadequate to support the jury's estimate of \$18,500.00 actual damages. In reaching this conclusion we are not unmindful that there is a clear distinction between the rules prescribing pecuniary relief to "one injured in his business or property" according to the terms of Section 15 of Title 15 of the United States Code, and that which is assessable in traditional or conventional actions for damages. *Chattanooga Foundry and Pipe Works v. City of Atlanta*, 203 U. S. 390.

At the argument on the reserved point the court posed a further question as to whether, under the expressed terms of Section 15, *supra*, the court, if required under the force of authority to delete from the judgment the item of damages, could, under the record, still allow the costs, including attorney's fees, as stated in the docketed judgment.

The suit authorized by Section 15 is *sui generis*. The wording of the statute is unique. We have earlier in this memorandum directed attention to the observation of Justice Holmes in the *Chattanooga Foundry* decision, *supra*, as to the differentiation in the element of damages under this law and in the other types of damage suits.

Moreover, it is significant that the Congress itself ordained that the injury denounced by this statute should be redressed in the [76] District Court of the United States "without respect to the amount in controversy," instead of requiring the jurisdictional amount generally necessary in damage litigation in the Federal court between private parties.

In the light of the broad investiture of the court's power in the allowance of costs by the express terms of the Act under which the suit was brought, and giving due consideration to the implied findings of the jury that defendants have injured plaintiffs in their business by unlawfully restraining and monopolizing interstate commerce in the public entertainment field, we think that the costs of suit, including the plaintiffs' attorney's fees, should be assessed against the defendants. *American Can Co. v. Ladoga Canning Co.*, (C. C. A. 7, 1930), 44 F. (2d) 763. In the case just cited the court, construing the singular wording of Section 15 of Title 15 of United States Code, said, "The statute authorizing plaintiff's recovery of reasonable attorneys' fees directs their inclusion as a part of the costs. We find nothing in this statute which limits this allowance to services rendered in the District Court. Its terms are broad enough to include plaintiff's reasonable attorneys' fees necessarily incurred in any court wherein the cause was pending. A similar construction has been placed on a similar statute." *Davis v. Parrington*, (C. C. A.), 281 F. 10. See, also, *Davis Agent, v. Parrington, etc.*, (C. C. A. 9), 281 F. 10;

Louisville & N. R. Co. v. Dickerson, (C. C. A.), 191 F. 705.

The unusual and broad character of the remedy provided by Section 4 of the Act of October 15, 1914, now Section 15, Title 15, U. S. C. A., relating to unlawful restraints and monopolies in interstate commerce is the subject of a scholarly and analytical article by Professor [77] Lawrence Vold, published January, 1940, in Volume XXVIII, Kentucky Law Journal. The title of this instructive material is "Are threefold damages under the Anti-trust Act Penal or Compensatory?" In aptly describing the components in the remedy, the learned authority stated, "x x x, the threefold damage provision is here compensatory in its nature, in liquidating compensation for accumulative intangible harm going beyond the ordinary recoverable legal damages to the business or property."

In ruling upon the defendants' motions under consideration we have followed the procedure directed by the Supreme Court in *Montgomery Ward & Co. v. Duncan*, 311 U. S. 243, and have entered this day an appropriate ruling and judgment which embodies the views expressed in this memorandum of conclusions.

Dated June 24, 1946.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed Jun. 24, 1946. [78]

United States District Court  
Southern District of California  
Central Division

No. 4328-M. Civil.

LARRY FINLEY and MIRIAM FINLEY,  
Plaintiffs,

vs.

MUSIC CORPORATION OF AMERICA, a Delaware  
corporation; H. E. BISHOP and LAWRENCE  
BARNETT,  
Defendants.

RULING ON DEFENDANTS' MOTIONS FOR  
JUDGMENT NOTWITHSTANDING THE VER-  
DICT OF THE JURY, AND FOR A NEW  
TRIAL, AND JUDGMENT

The above entitled action having been regularly called for trial before the Honorable Paul J. McCormick, United States District Judge, and a jury, on the 29th day of January, 1946, and succeeding days as shown by the record of this court; Messrs. Desser, Rau & Christensen, Wm. Christensen, Esq., and F. Filmore Jaffe, Esq., appearing as attorneys for the plaintiffs, Larry Finley and Miriam Finley; Messrs. Pacht, Pelton, Warne, Ross & Bernhard, Clore Warne, Esq., and Frank P. Doherty, Esq., and Harold F. Collins, Esq., appearing for defendants Music Corporation of America, H. E. Bishop and Lawrence



Barnett; at the conclusion of all of the evidence offered and received for and on behalf of the plaintiffs, and for and on behalf of the defendants, and after all parties had rested, the defendants moved for a directed verdict in their favor, which motion the court denied, and the Judge did thereafter submit the cause to the jury for their consideration; and the jury having rendered a verdict in favor of the plaintiff and against the defendants in the sum of \$55,500.00 as treble damages; and the defendants thereafter within due time made their motions for judgment in their favor notwithstanding the verdict, or, in the alternative, for a new trial in said action; the court having considered the briefs and arguments of counsel, and being fully advised in the premises, does find and adjudge that there is ample and substantial evidence to [79] support and sustain the implied finding of the jury that the defendants have conspired to restrain interstate commerce and to monopolize interstate commerce in that portion of the business of musical entertainment involving bands, orchestras, and attractions furnishing dance music at places of public entertainment, but that the evidence does not adequately disclose any means of determining the amount of damages per se sustained by the plaintiffs with any degree of certainty or definiteness, and therefore that the damages fixed by the jury are speculative and not recoverable under applicable law, and that solely by reason thereof the motion of the defendants for judgment notwithstanding the verdict of the jury should be granted to the extent herein stated, and not otherwise.



Now, Therefore, It Is Ordered that defendants' motion for a judgment in their behalf notwithstanding the verdict of the jury is hereby granted solely as to the specifications relating to monetary damages per se as set forth in Paragraph 2(d) of defendants' motion for a directed verdict at the close of all the evidence, filed herein on February 11, 1946; that defendants' motion for a new trial is denied.

And, Accordingly, judgment is ordered for the plaintiffs, Larry Finley and Miriam Finley, upon all the issues herein, except damages per se, and also for their costs in the sum of \$1592.85, and the further sum of \$7500.00 reasonable attorneys' fees, also as part of their costs herein, making in all the sum of \$9092.85 as their total costs of suit.

Dated June 24, 1946.

PAUL J. McCORMICK  
United States District Judge

Judgment entered Jun. 24, 1946. Docketed Jun. 24, 1946. Book 39, page 24. Edmund L. Smith, Clerk; by P. D. Hooser, Deputy.

[Endorsed]: Filed Jun. 24, 1946. [80]

[Title of District Court and Cause.]

MOTION TO REFORM AND MODIFY ORDER,  
AND FOR JUDGMENT

Defendants Music Corporation of America, a Delaware corporation, H. E. Bishop, and Lawrence Barnett, and each of them, move said Court to reform and modify its order dated June 24, 1946, which said order is entitled "Ruling on Defendants' Motions for Judgment Notwithstanding the Verdict of the Jury, and for a New Trial, and Judgment", and move said Court for judgment in favor of said defendants, all more specifically as follows:

1) That the whole of the said order and ruling following the recitals thereon, to wit, the whole of the portion commencing with the words "the court" on page 1 at line 31, and to and including the whole of the balance of said form of order as set forth on page 2, be stricken, and in lieu and place thereof the Court rule and order in the following language:

"The Court having considered the briefs and arguments [81] of counsel, and being fully advised in the premises, and having found that the motion of defendants for judgment notwithstanding the verdict of the jury, should be granted,

"Now, Therefore, It Is Ordered that defendants' motion for a judgment in their behalf notwithstanding the verdict of the jury is hereby granted solely as to the specifications relating to monetary damages

per se as set forth in Paragraph 2(d) of defendants' motion for a directed verdict at the close of all the evidence, filed herein on February 11, 1946; that defendants' motion for a new trial is denied; and It Is Ordered that the judgment heretofore rendered and made herein, in favor of the plaintiffs, be and the same hereby is vacated and set aside; and

"It Is Adjudged that plaintiffs take nothing by their complaint herein filed and that judgment be in favor of said defendants, and each of them, against the plaintiffs.

"Dated: .....

.....  
United States District Judge"

The grounds for said motion are that there is no province, power or authority for the Court in granting said defendants' motion to do other than order and direct judgment for the defendants, and to vacate the judgment theretofore rendered, and to render and make a new judgment in accordance with said ruling, and that the procedure proposed upon this motion is in accordance with the Federal Rules of Civil Procedure and the practice of the Courts of the United States.

2) In the alternative and in the event the foregoing [82] motion for order is denied, said defendants move to modify said order and ruling of June 24, 1946, by strik-

ing therefrom the following quoted parts and portions thereof:

a) Commencing with line 33 on page 1, the following language:

“that there is ample and substantial evidence to support and sustain the implied finding of the jury that the defendants have conspired to restrain interstate commerce and to monopolize interstate commerce in that portion of the business of musical entertainment involving bands, orchestras, and attractions furnishing dance music at places of public entertainment, but”

b) Commencing at line 19 on page 2, the following language:

“And, Accordingly, judgment is ordered for the plaintiffs, Larry Finley and Miriam Finley, upon all the issues herein, except damages per se, and also for their costs in the sum of \$1592.85, and the further sum of \$7500.00 reasonable attorneys’ fees, also as part of their costs herein, making in all the sum of \$9092.85 as their total costs of suit.”

The grounds for said motion are as follows:

As to specification (a), said portion is erroneously and improperly included in the form of ruling and order, and that there is no power or authority for the Court, upon ruling on the motions before it, to make or purport to make any finding of fact as to any issue tendered in the

case or tried to the jury, and that said portion of the order is surplusage and made without authority.

As to specification (b), there is no authority under any statute or law of the United States granting power or authority to [83] the Court to order or direct a judgment in favor of the plaintiffs for costs and attorneys' fees in an action, as here, where plaintiffs have not shown they are injured in their property, and are not entitled to a judgment for damages for such injury, and the granting of any judgment in favor of plaintiffs as ordered by said portion sought to be stricken, is erroneous.

Said motions are made and based on the records and files in said cause, the minutes of the Court, said orders and judgment specifically referred, this motion, and points and authorities filed in support hereof.

Dated: July 5, 1946.

FRANK P. DOHERTY

HAROLD F. COLLINS

PACHT, PELTON, WARNE, ROSS  
& BERNHARD

By Clore Warne

By Bernard Reich

Attorneys for Said Defendants [84]

Received Copy of the within Motion to Reform & Modify this 5 day of July, 1946. Dessler, Rau & Christensen, Attorneys for Plaintiff.

[Endorsed]: Filed Jul. 5, 1946. [85]

[Title of District Court and Cause.]

[ORDER DENYING MOTION TO REFORM AND  
MODIFY ORDER AND JUDGMENT]

The motion of defendants to reform and modify the order dated June 24, 1946, and for judgment in favor of said defendants, is denied in toto.

Dated August 8, 1946.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed Aug. 8, 1946. [86]

---

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT OF  
APPEALS

Notice Is Hereby Given that Larry Finley and Miriam Finley, plaintiffs above named, hereby appeal to the Circuit Court of Appeals for the Ninth District from the Ruling on defendants' Motion for Judgment Notwithstanding the Verdict of the Jury and for a New Trial, and from the Judgment entered in this action on June 24, 1946.

Dated: This 21st day of September, 1946.

DESSER, RAU & CHRISTENSEN

By F. Filmore Jaffe

Attorneys for Plaintiffs [87]

[Affidavit of Service by Mail.]

[Endorsed]: Filed & mld. copy to Pacht, Pelton, Warne, Ross & Bernhard, Attys. for Defts. Sep. 21, 1946. [88]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that defendants, Music Corporation of America, a corporation, H. E. Bishop and Lawrence Barnett, jointly and severally, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit, from those certain orders and judgments herein, and parts thereof, as follows:

1. From that certain part and portion of the order and judgment of the Court made and entered June 24th, 1946, which said order is entitled "Ruling on Defendants' Motions for Judgment Notwithstanding the Verdict of the Jury, and for a New Trial, and Judgment", and which said portion of said order and judgment appealed from is in words and figures as follows:

"that there is ample and substantial evidence to support and sustain the implied finding of [89] the jury that the defendants have conspired to restrain interstate commerce and to monopolize interstate commerce in that portion of the business of musical entertainment involving bands, orchestras, and attractions furnishing dance music at places of public entertainment,"

and together with the following part of said order and judgment, to wit:

"And, Accordingly, judgment is ordered for the plaintiffs, Larry Finley and Miriam Finley, upon all the issues herein, except damages per se, and also for their costs in the sum of \$1592.85, and the further



sum of \$7500.00 reasonable attorneys' fees, also as part of their costs herein, making in all the sum of \$9092.85 as their total costs of suit."

2. From that part of the order and judgment made and entered June 24th, 1946, and entitled "Ruling on Defendants' Motions for Judgment Notwithstanding the Verdict of the Jury, and for a new Trial, and Judgment," which denies defendants' motion for a new trial, and which said appeal is taken and is to be considered upon the contingency and only in the event that the part of said judgment and order of the Court so made and entered which grants defendants' motion for a judgment in their behalf notwithstanding the verdict of the jury, is reversed.

3. From the order of the Court dated and filed August 8th, 1946, which refused to re-assess and re-tax costs, and denied said defendants' motion to reform or modify the order of the Court dated [90] June 24th, 1946, and grant judgment for the defendants, and from each and every part thereof.

Dated: September 23rd, 1946.

PACHT, PELTON, WARNE, ROSS  
& BERNHARD

By Clore Warne

Attorneys for Said Defendants

[Endorsed]: Filed, mld. copy to Desser, Rau & Christensen Sep. 23, 1946. [91]

[Title of District Court and Cause.]

STIPULATION RE RECORD ON APPEAL  
WAIVING BOND, ETC.

Plaintiffs, Larry Finley and Miriam Finley, and defendants, Music Corporation of America, H. E. Bishop and Lawrence Barnett, have respectively appealed from the order, or parts thereof, made and entered by the Court herein on June 24, 1946, and said parties have designated portions of the record on appeal necessary to be contained in the record on appeal. This stipulation is for the purpose of facilitating and agreeing upon appropriate record on appeal, and as to other matters incident to said appeal as herein set forth.

Said parties, by and through their respective counsel, stipulate and agree as follows:

1) A single record on appeal shall be prepared and the matters designated by each of the parties upon the appeal taken shall be included in said record without duplication. The cost of the preparation of the Clerk's record on appeal will be paid one-half by [97] each of the said parties respectively, plaintiffs and appellants and defendants and appellants, said amount to be paid when the Clerk presents his estimate of the cost of said record.

2) There is to be included in the reporter's transcript all of the evidence and proceedings had upon the trial of said action and it shall be sufficient for the plaintiffs and appellants to file one copy of the reporter's transcript of the said evidence and proceedings in lieu of the two copies provided by Rule 75, said parties having stipulated heretofore acknowledging receipt of a copy of said reporter's transcript.

3) All of the original papers and exhibits shall be sent to the Court of Appeals in lieu of copies.

4) There shall be included in said Clerk's record of proceedings certain instructions requested by the defendants and refused by the Court, to wit:

Defendants' Requested Instruction No. 35

Defendants' Requested Instruction No. 37

Defendants' Requested Instruction No. 43

Defendants' Requested Instruction No. 44

Defendants' Requested Instruction No. 49

Defendants' Requested Additional Instruction No. A

Defendants' Requested Additional Instruction No. C

Defendants' Requested Additional Instruction No. D

Defendants' Requested Additional Instruction No. F

5) Each of the parties hereto waives bond for costs on appeal and plaintiffs and appellees, Larry Finley and Miriam Finley, stipulate and agree to a stay of execution of the judgment of said case and the spreading of the mandate of said final judgment in the District Court and supersedeas bond is hereby waived.

6) The time within which the record on appeal on the part of all appellants herein may be filed with the Appellate Court is hereby extended, by and with the consent of the said District [98] Court, to and including the 10th day of December, 1946.

Dated: October 23, 1946.

DESSER, RAU & CHRISTENSEN

By Jack L. Rau

Attorneys for Plaintiffs, Appellants and Appellees,  
respectively, Larry Finley and Miriam Finley

PACHT, PELTON, WARNE, ROSS  
& BERNHARD

By Clore Warne

Attorneys for Defendants, Appellants and Appel-  
lees, respectively, Music Corporation of  
America, H. E. Bishop and Lawrence Barnett

It Is So Ordered.

Dated: October 25, 1946.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed Oct. 26, 1946. [99]

---

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 99, inclusive, contain full, true and correct copies of Complaint for Damages and Injunction Under Sherman Anti-Trust Act; Answer to Complaint; Minute Order Entered February 6, 1946; Amended Complaint for Damages and Injunction Under Sherman Anti-Trust Act; Defendants' Requested Instructions Nos. 44, 43, 35, 37, and 49; Defendants Request for Additional Instructions Nos. A, C, D and F; Verdict of the Jury; Application for Attorney's Fees, Attorneys for the Plaintiffs; Minute Order Entered March 21, 1946; Judgment; Memorandum of Costs and Disbursements; Stipulation re Costs; Motion for Defendants for Judgment Notwithstanding the Verdict; Defendants' Motion for New Trial; Partial Ruling

on Defendants' Motions for Judgment Notwithstanding the Verdict of the Jury and for New Trial; Memorandum of Conclusions on Defendants' Motions for Judgment Notwithstanding the Verdict of the Jury and for New Trial; Ruling on Defendants' Motions for Judgment Notwithstanding the Verdict of the Jury and for a New Trial and Judgment; Motion to Reform and Modify Order and for Judgment; Order Denying Motion to Reform and Modify Order and for Judgment; Plaintiffs' Notice of Appeal; Defendants' Notice of Appeal; Plaintiffs' Designation of Record on Appeal; Defendants' Designation of Record on Appeal and Stipulation and Order re Record on Appeal, Waiving Bond, etc. which, together with Original Reporter's Transcripts of Proceedings on September 28, 1945, December 21, 1945, January 29, 30 and 31, 1946, February 1, 4, 5, 6, 7, 8, 11, 12, 13, 14 and 15, 1946, March 21, 1946 and June 14, 1946 and Original Plaintiffs' Exhibits Nos. 1 to 13 inclusive and Original Defendants' Exhibits A to R-1, inclusive, transmitted herewith, constitute the record on the appeals of Plaintiffs and Defendants to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$18.40 one-half of which has been paid by Plaintiffs-Appellants and one-half of which has been paid by Defendants-Cross-Appellants.

Witness my hand and the seal of said District Court this 21 day of November, A. D. 1946.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy Clerk

[Title of District Court and Cause.]

Honorable Paul J. McCormick, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California  
Tuesday, January 29, 1946

Appearances:

For the Plaintiff: Desser, Rau & Christensen, by William H. Christensen, Esq., and F. Filmore Jaffe, Esq.

For the Defendants: Pacht, Pelton, Warne, Ross & Bernhard, by Clore Warne, Esq.; and Frank P. Doherty, Esq.; and Harold F. Collins, Esq.

Los Angeles, California, Tuesday, January 29, 1946.  
2:00 P. M.

(A jury was duly empaneled and sworn.)

Opening Statement on Behalf of Plaintiff

Mr. Christensen: May it please the court, counsel, and you, ladies and gentlemen of the jury:

This is, as you know, called an opening statement. The function of an opening statement is simply to enable you to better follow the evidence as you hear it. It is not evidence, and I will not attempt to tell you in detail the evidence which will be presented.

The Mission Beach Amusement Center is a playground and recreational center situated in and owned by the City of San Diego. I believe it is the only beach amusement center in the city of San Diego. It consists, among other things, of various concessions, a plunge, a roller skating rink, and the Mission Beach Ballroom. I told you it was and is owned by the City of San Diego.



For a period of approximately five years prior to the 3rd of January of last year, it was under lease to Mr. Daillard, whom you have heard mentioned here. The lease was expiring at the end of the year, and the City of San Diego published a notice inviting bids of persons to lease the entire amusement center openly and competitively. Mr. Finley, Larry [2\*] Finley, as I call him and will probably continue to do it, Larry Finley has been in the band and entertainment business for about fourteen years. He was at one time a band leader himself. Since May, I believe it is, of 1944, he owned and operated the Trianon Ballroom in the city of San Diego. Since September of that year he was the managing operator of the Casino Gardens, a ballroom located down here at Ocean Park, a portion of the city of San Diego commonly known as Ocean Park. He had gone to San Diego on another enterprise originally, but became interested in the general welfare particularly of the servicemen in and about the city of San Diego. So when he saw the notice that bids were to be let, he made inquiry and then he knew, of course, that in order for it to be operated, for any first-class ballroom to be operated profitably, it is necessary to have what is known as name bands.

Name bands, I believe the evidence will show, are almost what the name suggests, much like a star in motion pictures, that the name would be known to the man on the street. It is a band which has attained national prominence by reason of its activities in radio, through records, exploitation and playing for a period of time.

So he went to the Music Corporation of America and there he talked with Mr. Hal Howard, one of their representatives. He told Mr. Hal Howard that he was think-

\*Page number appearing at top of page of original Reporter's Transcript.



ing about, if he could [3] make satisfactory arrangements, making a bid on that park, and asked if they could service him with their bands, they having the control of the great majority of name bands in the United States. And I think the evidence will show that over ninety per cent of the name bands available to operators in San Diego are handled by them.

Mr. Hal Howard said to Mr. Finley, "Well, Mr. Daillard is now operating a place, and we furnish him bands. Now that he has taken over the Pacific Square Ballroom, I don't see any reason why we can't furnish you, too, with bands for the Mission Beach Ballroom."

Mr. Finley went and saw others. They have in that industry what is known as the "Big Three," the William Morris Agency, the General Amusement Corporation, and, of course, the Music Corporation of America. He talked with the people from the General Amusement Corporation, also the William Morris Agency, and while they have very few bands available here, they, too, said they would assist him.

After doing that, he prepared his bid. It will be here before you. Attached to that are many letters of references, particularly from the places where he had been in business before, and one of which was the place where he was in business in the city of Burbank.

The Council of the City of San Diego considered the bids. Mr. Daillard, and when I say Mr. Daillard, I believe a man by [4] the name of Ed Wakeland had an interest in the matter too, but Mr. Daillard was the man that was operating it, and Mr. Daillard and Mr. Wakeland put in their bid. Mr. Finley put in his bid, and I believe there were several others; a few others, at least,

Mr. Finley's bid, I might say, offered to pay the City of San Diego a lower percentage of the gross profits, the gross receipts, than did Mr. Daillard's bid. However, the City of San Diego, acting through its legislative body and mayor, considered those bids and determined that Mr. Finley was the man who should have the Mission Beach Amusement Center.

Then after—oh, yes, I forgot to tell you that Mr. Finley went and got letters from the William Morris Agency and from the General Amusement Corporation advising the City Council of the City of San Diego that they would do what they could to furnish him with bands. The Music Corporation of America, Mr. Bishop and Mr. Barnet, learned of this and did everything they could to cause the representatives of the General Amusement Corporation and the William Morris Agency to retract that, or at least write a letter to Wayne Daillard saying that they would not service him with the bands. That, however, was unsuccessful.

Then the bids were let, and the next thing we find is that Mr. Finley had been awarded the lease of the Mission Beach Amusement Center, including the ballroom. Then he went [5] again back to see the representatives of the Music Corporation at their office. It is located in the city of Beverly Hills, if you happen to know, and he again asked them if they would furnish him with bands. They told him that they would see if they could work something out for him, and kept putting the matter off. [6]

Then the time became very short to open. He took over on the 3rd day of January, so Mr. Daillard could have the benefit of New Year's, and immediately then closed the entire park and spent a large sum of money in

modernizing it, including the ballroom, beautifying it. In the ballroom he made extensive alterations and beautifications, put in an entirely new sound system.

The ballroom, I believe you will find—and we have some pictures we will show you of it—is a very beautiful place. It has approximately 22,000 feet, square feet, in area.

I told you that he had gone back after he got the bid and tried to get them to agree to furnish him with bands. This they again put off and said it was a little too early to answer.

Again, on or about the 15th day of January, 1945, Mr. Finley again visited the defendants and again asked that he be furnished name bands for use at Mission Beach.

They told him that they could not furnish him with any.

He then attempted to get them to furnish him with what we would call attractions, you know, to appear with a band there. To mention just a few of them, such artists as Bonita Granville, the King Sisters, Laurel and Hardy, Frank Sinatra. To which the Music Corporation of America, as agents, again told them they would think it over and advise [7] him, except they said they would furnish him with the King Sisters, which is a singing act, as I know it, for a two-day engagement there February 11th and February 12th of 1945.

It took them about a month to complete the work on modernizing and beautifying, etc., that Mr. Finley did on the park; and they opened on February 11th.

Music Corporation of America agreed to furnish the King Sisters for the 11th and 12th of February at an agreed price of \$1,500.00 for the engagement; told them,

You have it. We will prepare the contracts and we will mail them to you and send them down to you at San Diego."

Relying upon that promise, Mr. Finley advertised that fact and expended several hundred dollars in doing that.

He called the office of Music Corporation of America on occasions, telling them that the contracts had not arrived yet. What happened? Why don't I get them? One thing and another. But no direct answer.

The next thing that he knew of it, he read in the papers of San Diego that the King Sisters had been booked by Music Corporation of America into the Pacific Square Ballroom.

Then about the 3rd of February or shortly before that—I have already told you, I believe, that he made several attempts to get other bands—they offered him Vaughn Monroe, or at least they offered him some band, but nothing of any importance there, but this Vaughn Monroe was the act. I should [8] tell you that Vaughn Monroe has with his orchestra a singing group, and while Pacific Square had never had a singing act in its place before, when Larry Finley said he wanted it for that, Music Corporation of America promptly booked the King Sisters into play at the Pacific Square.

Pacific Square, as I have already told you, is a ballroom in the City of San Diego. It is located down there near the freight depot in the City of San Diego, right on the main highway—I think it is Pacific Highway—and was at least at that time owned and operated by Daillard.

About the 12th day of February of 1945, after being, to use a vernacular phrase, kicked around or pushed around by Music Corporation of America—

Mr. Warne: If the court please, could we ask that Mr. Christensen keep his voice up a little? It is somewhat difficult to hear him over here.

The Court: Yes. Raise your voice.

Mr. Christensen: Thank you, Mr. Warne. I did not know that, and I will stand back a little bit.

As I say, on or about the 12th of February, Mr. Finley went to the office of Mr. Joe Ross, a member of the law firm of Pacht, Pelton, Warne, Ross & Bérnhard, one of the counsel here now representing the defendant, and talked to Mr. Ross at his office in the Union Bank Building and told him that he was contemplating filing this action against Music Corporation [9] of America because of their actions in not giving him any name bands and giving them all to his competitor.

Mr. Ross told him that he would try to straighten the matter out and that he was in sympathy with Mr. Finley on account of the Music Corporation of America's actions. Thereafter there were some other matters along the same line, which I will not attempt to detail for you, but which the evidence will show it became necessary because of the actions of Music Corporation of America for Mr. Finley to make repeated trips to the East and to make direct bookings of all the bands in order to get any at all.

Mr. Finley, I have told you, operates the Casino Ballroom down at Ocean Park. There the Music Corporation of America will furnish him bands, their name bands, notwithstanding the fact that another first-class ballroom, the Aragon Ballroom, is located only one block away.

Music Corporation of America furnished bands to Wayne Daillard. Wayne Daillard was operating both the Mission Beach and the Pacific Square.



Music Corporation of America furnished name bands to the Pacific Square Ballroom when it was operated by Wayne Daillard.

Wayne Daillard and Music Corporation of America have a contract, the language of which is, I believe, "The first refusal." We will show you by the evidence that, while it is [10] called "a first refusal," it is an exclusive contract.

We will also show you that in the conversations with Mr. Larry Finley with Music Corporation of America's agents, they told him, "We can't give you any bands while you are in San Diego. If you open up, up in Oakland, we will give you all the bands you want. If you open up"—and when he did open up, in partnership with Tommy Dorsey and Jimmie Dorsey in the operation of the Casino Gardens at Ocean Park, they furnished him with all the bands he wanted.

The only place they would not furnish him with any bands was in the Mission Beach Ballroom at San Diego.

We will show you that Music Corporation of America has offices located in other parts of the United States. Before the war they had them in other parts of the world. That their main office is here in the City of Beverly Hills. Their agents travel throughout the United States, or at least they cross state lines in making bookings; that they contract, and in the preparation of the contract through the mails, cross the state lines; that remittances are made throughout the United States and thereby crossing state lines; that the telephone and the telegraph are used in crossing state lines.

We will show you that notwithstanding the fact that Mr. Finley is an experienced operator and that he has made Mission Beach Ballroom a far finer place to go since

he has had it than it was at least for a number of years before that, and [11] that during the operation of Mission Beach Ballroom immediately prior and on what we believe the evidence will show a more or less haphazard operation by Wayne Daillard—but, mind you, with name bands—the profit was approximately \$40,000 of Mr. Daillard. Mr. Daillard's operation was the only other first-class ballroom in the City of San Diego, Pacific Square. The profit was—without attempting to quote it exactly—I say approximately \$170,000 during the year 1945.

Notwithstanding all these things, and because of the refusal of the Music Corporation of America to furnish Mr. Finley with name bands, he has lost to date approximately \$117,000, because of Music Corporation of America's, we would say, monopolistic control of the bands through conspiracies existing between Mr. Daillard and Music Corporation of America.

Thank you, ladies and gentlemen.

The Court: Will you defer your statement, gentlemen, or will you make it now?

Mr. Doherty: I see Mr. Warne motioning to speak to me. I will see what he has to suggest.

We were just arguing, Your Honor, over one of these technical matters, which is of no interest to anyone, and I overruled them. And, as Your Honor indicated that I have the choice of making an opening statement now or at the close of the plaintiff's case, I think it would be to the advantage of [12] the jury to have the picture before them as they go along, to have the statement at this time, if I may, Your Honor.

The Court: Yes, sir.



OPENING STATEMENT ON BEHALF OF  
THE DEFENDANTS

Mr. Doherty: Ladies and gentlemen of the jury: As his Honor has indicated in the little brief colloquy we have had in trying these cases, the defendant sits down and waits for the other side to put on his case before he discloses what he has and tips him off. That is not our defense in this case. Our defense is on the merits, and you are going to have the whole story right at the beginning.

The evidence will show that Mr. Finley, while a young man, had some connection in a small way with the entertainment business back in the East. The evidence will show that he was in the jewelry business, first as a salesman, then as a small proprietor in a store out in Burbank up until sometime in—oh, '44. Incidentally, he put on some performances in connection with his jewelry business. In other words, he allowed free tickets to dance halls from his jewelry store, to get people to go to his dance hall and, through the dance hall, patronize his jewelry store.

The evidence will show that his first activity in the dance hall business was some time mid-1944, when he had some connection with the Trianon Ballroom, a small upstairs ballroom in San Diego. Then he bid on this particular enterprise: [13] Before that, I think, in view of the questions of his Honor to you qualifying you as jurors, I had better give you a little background of the American Federation of Musicians and the band business and the Music Corporation of America.

All musicians, whether they are the great symphonies or the dance bands, are, without practically any exception, members of the American Federation of Musicians, known

as the Musicians' Union, a very powerful and influential and efficient union.

They will not permit Music Corporation of America or all of its competitors—and, in various fields they run into, I might say, hundreds or maybe over a thousand—to operate in connection with their musicians without a license that the American Federation of Musicians issues, as it did to the Music Corporation of America.

That is to protect the members of their union so that they will be dealt with fairly. In addition to that, the American Federation of Musicians provide a form of contract that this licensed agent, Music Corporation of America, must have with each band and with each dance hall proprietor. It prescribes the contract, so that the contracts are uniform between the Music Corporation of America and all of its competitors in dealing with band leaders and dealing with dance halls.

The job of the Music Corporation of America, as is the [14] job of its competitors, is to represent the band leaders and attempt to make arrangements—bookings, sometimes they call them, or placements they call them—put them in theatres, put them in moving pictures, dance halls, and what-not, at a compensation.

The American Federation of Musicians have in the contract that they fix the minimum compensation. You can never pay them less than what the American Federation of Musicians say they shall be paid.

That contract is one that is used, and the evidence will show that Mr. Finley knew that; and the evidence will show that, by the terms in the contract, no band leader can be assigned by Music Corporation of America or any other agency without the consent of the band leader. He

must consent to the compensation, to the place he is going to play, and when he is going to play, and the length of time he is going to play.

The evidence will show that any theatre owner, moving picture concern, dance hall operator, can go around the employment agency, the M. C. A., Music Corporation of America, or any other agent and make his deal direct with the band leader. He does not have to go through the employment agency, but can deal direct. And the evidence will show that Mr. Finley did so.

The evidence will show that in 1940 or '41, in San Diego, [15] Mr. Daillard, who had wide experience in the entertainment business, wanted to build a new dance hall. This was over four years before Mr. Finley was ever heard of in the dance hall business.

Mr. Daillard went to the Music Corporation of America and said that he wanted to build a new dance hall in San Diego. There was none down there, and the defense activity began to bring in large numbers of people, and the Navy and the Army and the Marines were building up large forces there, and the Armed Forces members needed entertainment; and he thought it would be a good place to put a dance hall, but he did not want to go forward with a large investment of that sort unless he was assured he could get entertainment. [16]

So he asked in the form of a letter what Music Corporation of America could do for him, and they wrote him a letter giving him the first choice, which he must exercise within forty-eight hours, of taking a particular band or form of entertainment for his place. They said, "We have available this form of entertainment. You have the exclusive on it for forty-eight hours." If he did not take it in forty-eight hours they might place it anywhere they might

see fit. That went into effect and continued in effect until May, 1944. All this long before Mr. Finley was in the business in San Diego. They asked Mr. Daillard and a more formal contract with Music Corporation of America was entered into, setting forth in more detail as to the obligations of one and the obligations of the other. Music Corporation of America had the understanding that they had to use so many bands a year.

Now, keep in mind that these bands are not San Diego bands, and they are not Los Angeles bands. They are bands that move around over the country, just like any other type of showman. They move wherever there are engagements; New York, Florida, California, the Middle West, North and South. Now, I don't know anything about the band business. I don't go around to these places. Now, they have symphony bands, and they are up in his class up here, and then we come down into this class where we are, and they have what they call sweet bands, and they have hot bands, and they have jump and [17] jive bands. I don't know one from the other, but there is a certain taste among the young folks that they like this type or that type of band, or this type or that type of band leader. So Music Corporation of America can't just simply place a band as an employment agency and say, "You have to take this band," and give it to Mr. Daillard. They had to know how many bands he would use in a year, and then they would try to arrange to supply him with bands in the number he requested; so that the contract of 1941, and again of May, 1944, and the evidence will show long before Mr. Finley entered the business in San Diego, will show they had this arrangement, that Mr. Daillard had the exclusive forty-eight hours to elect whether or not he would take certain bands.

The evidence will show that Mr. Daillard, in addition to the so-called Pacific Square, which he built after this first arrangement, was also the operator under the City of San Diego lease of what is known as Mission Beach. He took it when it was nothing, and it was a losing proposition, and he lost money on it, and he built it all up, and in November, 1944, Mr. Finley sought the contract from the City of San Diego and was awarded it. Mr. Daillard had to move out in January, and Mr. Finley moved into Mission Beach. But Mr. Finley had his Trianon Ballroom in San Diego, the upstairs ballroom, from the summer of 1944, which he had been operating, and the evidence will show that he did buy one or two bands [18] from the Music Corporation of America, and had opportunities to buy others, but didn't.

The evidence will show that Mr. Daillard, an experienced operator, realized a city the size of San Diego could not have at the same time, with that limited population, two bands of high calibre competing with each other, that they would destroy each other. Here was Pacific Square in downtown San Diego, and here was Mission Beach seven miles out of town. So Mr. Daillard, in his operation of the Mission Beach, didn't use there what is called your name bands. The evidence will show what is and what is not a name band, and it will be rather a confusing proposition, but let that go, whatever it is. Mr. Daillard, in operating Mission Beach, used what is known principally as acts and western bands, bands that appealed to the type of people who like to go down to beaches and to merry-go-rounds, where they take the whole family, and things of that sort, sort of family affairs. In that way he operated at Mission Beach, and eventually was fairly successful in the proposition.



The evidence will show that when Mr. Finley determined to enter the field at Mission Beach and compete with Pacific Square, he didn't come to the M. C. A., the Music Corporation of America, and say, "Can you give us bands?" He went to the two competitors and got letters from them, and they wrote letters to be used by Mr. Finley in his contract, or offer, or [19] bid to the City of San Diego, so that he could say, "Here are two agencies that can supply bands, and here is their letter that they will supply us with bands," supply Mr. Finley at Mission Beach. And so he was awarded the contract.

The evidence will show that Mr. Bishop, an employee of Music Corporation of America, enthusiastic, working hard for his account, his customer, Mr. Daillard, did attempt to dissuade the competitors from being too active in helping Mr. Finley, putting it on the ground that you can't run two big shows in San Diego, because it isn't big enough a town.

The evidence will show that Mr. Stein, the president of the Music Corporation of America, Mr. Bishop being just an employee, a salesman, did not know anything of these activities, and I think you will find Mr. Finley will admit it. The award was made to Mr. Finley, and he was opening on February 3rd.

The evidence will show that Mr. Finley had bands every week from the time he opened until the time that he—well, as long as he has had them, up to the present time, so far as I know, and that he has never been denied bands, that he has had bands from the General Amusement Corporation, Fredericks Brothers, and William Morris Agency, the main competitors.

The evidence will show that when Mr. Finley started, instead of going around on a businesslike basis, he came

around and said, "You give me bands, or I am going to sue you," and [20] within forty-five days from the time he opened, this suit was filed for \$3,000,000.00—forty-five days from the day that he opened. And in the meantime, the evidence will show, Mr. Finley had bands at Mission Beach, some good bands, and he got bands from these other agencies.

The evidence will show that he had opportunity to get bands from the Music Corporation of America, and did not take advantage of it, and the evidence will show that after he filed suit he didn't want any bands from Music Corporation of America.

The evidence will show that Mr. Daillard, who owned Pacific Square, sold out in the spring of 1945, and that his contract with Music Corporation of America, giving Music Corporation of America—or, rather, giving him from Music Corporation of America the forty-eight-hour exclusive, ended, so that there was no longer any contract down there, and the evidence will show that Mr. Finley never made one request from Music Corporation of America for the period from that time to today. That is what the evidence will show, and it will show most of it by Mr. Finley, out of his own mouth.

The evidence will show there is nothing personal between Music Corporation of America and Mr. Finley; and Mr. Finley engaged with Jimmy Dorsey and Tommy Dorsey in a small way down there at a beach town in Ocean Park, and Music Corporation of America supplied them with bands. There is nothing personal [21] to it.

The evidence will show that when Mr. Finley couldn't get bands, couldn't get them through the agency, that he went to the band leaders direct and got the bands, as he had a right to do.



The evidence will show that there is no monopoly, that there was no restraint of trade, and that what losses Mr. Finley sustained down in San Diego was because Mr. Finley either didn't know the game, tried to do something that wasn't possible of being done down there, or operated on a basis so that he would have here a claim for damages, that he would ask this jury to award him in this case.

I think I have given you sufficient highlights to know there is going to be a law suit.

The Court: Proceed.

Mr. Christensen: Mr. Knox, please.

HARLEY E. KNOX,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

Mr. Doherty: Your Honor, may it be understood that all evidence offered from now on is subject to our objection that the plaintiff has no claim for the reason that there is no matter involving interstate commerce, that the matter is not a matter of commerce, and that there is no showing here by the [22] plaintiff's opening statement where any wrong has been committed by the defendants, and that the plaintiff's opening statement indicated that the basis of his claim has no merit because there was no wrong committed, according to his statement, by the defendants as against the plaintiff; and that that objection may be deemed to be repeated to the testimony offered by each succeeding witness, a continuing objection.

The Court: It may be so understood, and the objection is overruled excepting as hereafter may be indicated otherwise.

(Testimony of Harley E. Knox)

By Mr. Christensen:

Q. Your name is Harley Knox, I believe? Is that correct, sir?      A. That is correct.

Q. What is your business, occupation or profession, sir?      A. I am in the creamery business.

Q. You have an official—      A. Yes, sir.

Q. That is, the Mayor of the City of San Diego; is that true?      A. Yes, sir.

Q. In addition to that, you are the president of the California League of Municipalities, are you not, sir?

A. I am.

Q. Prior to the time that you were mayor of the City of [23] San Diego, you were a member of the City Council there, were you not, sir?      A. Yes, sir.

Q. You are familiar with the Mission Beach Amusement Center in the city of San Diego?      A. I am.

Q. That is the only beach amusement center in the city of San Diego, isn't it, Mayor Knox?

A. It is the only beach amusement center of like character.

Q. And that Mission Beach Amusement Center is owned by the City of San Diego, is it not?

A. Yes, sir.

Q. And has been for a long period of time, at least?

A. Yes, sir.

Q. It is, and has been for some period of time now, the practice and custom of the City of San Diego to let that entire amusement center to others on a lease basis?

Mr. Doherty: Just a minute. That is not an issue in this case. Object on that ground, and incompetent, irrelevant and immaterial.

(Testimony of Harley E. Knox)

The Court: I didn't think there was any issue on that, that this is a concessionaire of the City of San Diego. I didn't understand that there was any issue raised in the pleadings on that. [24]

Mr. Christensen: My point is this: I want to show it is owned by it, and that they do offer it for lease, and that they do it on open bidding, and that they did that in this case; that the bids were received, and among those bids was a bid from Wayne Daillard. Incidentally, at this time I have a certified copy of that bid, and offer it in evidence.

Mr. Doherty: We have no objection, Your Honor, to offering the bid or the lease, but our objection still stands as to the line of inquiry.

The Court: Is there any question, gentlemen? I didn't understand there was in the discussions on pre-trial. You were not here, Major Doherty, but in those discussions I understood it was conceded that this was a concessionaire.

Mr. Warne: Correct.

The Court: Of the City of San Diego, and pursuant to that arrangement bids were submitted.

Mr. Warne: That is correct.

The Court: I don't see any necessity for taking up our time on that.

Q. By Mr. Christensen: May I then direct your immediate attention to the fact that certain bids were asked for in the latter part of—it was in September, was it not, of 1944?

Mr. Doherty: The same objection, Your Honor.

The Court: Overruled.

(Testimony of Harley E. Knox)

Q. By Mr. Christensen: Is that correct, Mayor? [25]

A. I think the—I am not sure if it was September, but it was late in 1944.

Q. And pursuant to your advertisement for bids, there were several bids, at least, submitted?

A. That's right.

Q. One of the bids was by Wayne Daillard, Wayne W. Daillard; that is correct, sir? A. That's right.

Q. And also the plaintiff in this action, Mr. Larry Finley, submitted a bid? A. Yes, sir.

Q. And there were several others?

A. I think there was at least one other.

Q. The City Council, or yourself, considered all of those bids, did you? A. Yes.

Q. And Mr. Finley's bid offered to pay the City a little less than the others, did it not?

A. That's right.

Q. After the consideration of all of the bids which had been submitted, the City Council determined that Mr. Finley's bid was the best bid; is that correct?

A. Not from a financial standpoint, but from the promised character, improvement in character, of the center, and it was for that reason. [26]

Mr. Doherty: I submit that is a conclusion of the witness and should be stricken. The document is the best evidence.

The Court: That is true. The question was not objected to, however. I will permit the answer to stand. Proceed.

Mr. Christensen: Had Your Honor finished?

The Court: Yes.

(Testimony of Harley E. Knox)

Q. By Mr. Christensen: Were you familiar with the operation of the Mission Beach Amusement Center under Mr. Daillard? A. I was.

Q. Are you familiar with it during the time it has been operated by Mr. Finley? A. I am.

Q. Was there a difference in the operation?

Mr. Doherty: Objected to on the ground it calls for a conclusion of the witness; incompetent, irrelevant and immaterial; and is outside the issues of this case.

Mr. Christensen: I propose to show that the Beach has been operated, and particularly the dance hall, has been operated in a much better fashion; that it was at that time, under Mr. Daillard's operation, a very unsatisfactory operation. As a matter of fact, there were constantly reports—

The Court: Just stop right there. I want to establish my rule here right at the outset that I don't want any argument [27] on objections unless I ask for it. That applies to both of you. I am directing it to you now, Mr. Christensen.

Mr. Christensen: Yes, your Honor.

The Court: And when you ask a question and it is objected to, I don't want any argument from either of you, either in elaboration of the objection, or in protest against the objection. That applies to all counsel on each side. The objection is sustained.

Q. By Mr. Christensen: Will you tell me if Mr. Finley has done the things which he promised to do in his bid?

Mr. Doherty: That would call for a conclusion of the witness, and the same objection.

(Testimony of Harley E. Knox)

Q. By Mr. Christensen: Of your own knowledge? May I add that to the question?

The Court: You can elicit what he has done, but you cannot frame a question in that manner.

Q. By Mr. Christensen: Mr. Knox, will you tell me what Mr. Finley has done since he has been the lessee of Mission Beach?

A. He has complied in every way that I know of with the terms of his contract.

Mr. Doherty: I submit, your Honor, that is a conclusion of the witness, and I ask the answer be stricken as a conclusion. [28]

The Court: Motion denied.

Q. By Mr. Christensen: If there were any complaints against the operation of Mission Beach, would those matters come to your attention as mayor of the City of San Diego? A. Yes, sir.

Q. Have there been any complaints made?

Mr. Doherty: I object on the ground it is not within the issues of this case.

The Court: Overruled.

The Witness: The complaints—I don't remember that I have had a complaint during the past year on the operation of Mission Beach.

Q. By Mr. Christensen: Will you tell me—will you describe the operation of Mission Beach while it was operated, let us say, during the last year of Mr. Daillard's operation there?

Mr. Doherty: I object on the ground it is incompetent, irrelevant and immaterial, and not an issue in this case.



(Testimony of Harley E. Knox)

The Court: In view of the opening statement of the defendants I shall permit the question.

The Witness: Will you repeat the question?

Mr. Christensen: The reporter will read it.

(The question was read.)

The Witness: The operation was totally unsatisfactory from a municipal viewpoint. Law and order did not prevail in [29] the Amusement Center. I made several trips there, inspection trips, myself, took my family with me, and succeeded only in getting insulted for the mere privilege of going into the place. As you know, we had a high military concentration in the San Diego area, and the place was literally swarming with servicemen. No policeman, no private guards, were employed, that I know of. I couldn't find any. The rest rooms were in a disgraceful condition. Sailors, Marines, Soldiers walked about the place clearly intoxicated, carrying bottles of liquor openly by the neck, swinging them around. Fist fights were common, and the operation was of such a character that the City Council determined in its call for bids that money would be a secondary consideration, and that the character of the operation must be the first consideration.

Q. Mr. Knox, is it true now that liquor is not permitted on the Amusement Center at all?

A. That is correct. By that I mean beer, I think, is permitted to be sold in one of the cafes, but whiskey and the heavier liquors are not sold or permitted to be on the premises.



(Testimony of Harley E. Knox)

Q. Did Mr. Finley make any changes or improvements or alterations in the Mission Beach Amusement Center? A. He was required to by his contract.

Q. Did he do that? [30] A. He did.

Q. Do you remember Mr. Daillard approaching you at the time when this bid was under consideration?

A. Yes, sir.

Q. Can you fix the time a little more definitely for us, sir?

A. No, I cannot. In fact, at one time I had a memorandum from him in writing on it, and I have been unable to locate that memorandum. I am under the impression it was the summer of 1944. Mr. Daillard approached me in my office with reference to this contract.

Q. Will you relate the conversation, sir?

Mr. Doherty: Object on the ground it is hearsay, and no foundation laid so as to be binding on the defendants, and incompetent, irrelevant and immaterial.

The Court: Now, I don't want any argument unless I ask you for it.

Mr. Christensen: I am not going to.

The Court: Objection sustained.

Mr. Christensen: Could I ask your Honor to bear in mind the fact that we allege him to be a co-conspirator.

The Court: Yes, I have that in mind. A foundation must be laid for conversations regardless of to whom they relate.

Q. By Mr. Christensen: Was there any person, other than yourself and Mr. Daillard, present at the conversation, sir? [31] A. Yes, sir.

(Testimony of Harley E. Knox)

Q. Who was that?

A. Mr. Emil Klicka, Mr. Daillard's associate, and Mr. Walter W. Cooper, City Manager of the City of San Diego.

Q. Where was the conversation held, sir?

A. In the mayor's office.

Q. Now, will you relate to me the conversation that you had with Mr. Daillard at that time, sir?

Mr. Doherty: The same objection, your Honor. There is no allegation of conspiracy existing at that time.

The Court: Objection overruled.

The Witness: A Mr. Daillard and Mr. Cooper and Mr. Klicka came to my office by appointment, which they had requested, and asked what my reaction would be to an extension of one year of Mr. Daillard's lease, and I informed Mr. Daillard that I felt it was the consensus of opinion of the City Council, and it certainly was my own, that the character of the operation of Mission Beach would either be improved or the Mission Beach Amusement Center would be closed; and at that time he told me—in fact, at that time I told him that I favored calling for bids with a very specific set of specifications, requiring performance under the contract, and making that secondary to the financial consideration, and was told by him that that would be useless, that no one but Mr. Daillard could bid on the Amusement Center successfully, and he showed [32] me his contract, or a copy of it, which I did not read, with Music Corporation of America, and indicated to me that in the event that he were not the successful bidder, that there would be no dance operations with name bands in the Mission Beach dance hall.

(Testimony of Harley E. Knox)

Q. By Mr. Christensen: Mr. Knox, do you recall any discussion whatsoever among the council concerning the statement in Mr. Daillard's bid, as follows:

Mr. Doherty: Just a minute. That is objected to. Your Honor is familiar with that statement, I think, from the pretrial hearing.

The Court: Yes, sir.

Mr. Doherty: That is certainly hearsay, and incompetent, irrelevant and immaterial, and without the issues of this case.

The Court: Yes, I think you should not read from a document without disclosing to the jury the full contents of it.

Mr. Christensen: It has been offered into evidence, your Honor.

Mr. Doherty: Subject to the objection I have heretofore made as to hearsay as to the defendants, and without the issues of the case, and incompetent, irrelevant and immaterial.

The Court: Is this the one that was used at the pre-trial? [33]

Mr. Warne: That is right. This is the one Mr. Daillard used in connection with the pre-trial, or, in connection with the deposition which was taken.

The Court: May I see it?

(The document referred to was handed to the court.)

Mr. Warne: No foundation laid, your Honor.

Mr. Christensen: It has been certified to by the City Clerk.

The Court: Will you read the question, Miss Reporter?

(Testimony of Harley E. Knox)

(The question was read.)

The Court: Objection sustained to the question.

Q. By Mr. Christensen: Mr. Knox, was there any discussion among the City Council, in the consideration of the bids, of the question of whether or not it would be practical for any person other than Mr. Daillard to operate Mission Beach Ballroom?

Mr. Doherty: Just a minute. That is hearsay; incompetent, irrelevant and immaterial.

The Court: Overruled. Answer it "Yes" or "No."

The Witness: A. Yes.

Q. By Mr. Christensen: Are you familiar with the ballroom itself, the Mission Beach Ballroom?

A. Yes, sir.

Mr. Christensen: I would like to identify some of the pictures. We have a copy, and counsel can look at them at the [34] same time.

Q. By Mr. Christensen: Will you look at these pictures, the first one I have, and tell me if you recognize that picture. (Handing document to witness.)

A. Yes, sir, that is a picture of the Mission Beach Ballroom.

Q. That is a fair representation of the matters and things which are therein shown? A. I think so.

The Court: Are we going to take up time on this, gentlemen, or can you look at them and stipulate?

Mr. Warne: I think we can. These have never been submitted to us before. If counsel will indicate when they were taken, we may be able to agree.

The Court: Otherwise we will be taking up a lot of time with these things. But if you can't agree, we

(Testimony of Harley E. Knox)

will have to explore it. You certainly should be able to agree upon it.

Mr. Christensen: Mr. Warne, they were taken yesterday by Mr. Al Penrose, captain of the city fire department of the City of San Diego.

The Court: Perhaps they have not seen them before.

Mr. Warne: I have never seen them before. I suggest you pass to something else, and we will check them.

Mr. Christensen: You have copies there.

Q. By Mr. Christensen: Prior to letting the bid, was [35] any investigation made of Mr. Finley by the City Council, or by yourself?

A. The investigation of Mr. Finley was referred to the City Manager, if I remember correctly.

Q. There were a number of letters of commendation attached, were there not?

A. I received letters of recommendation for Mr. Finley, as I did for all bidders.

Q. Are you familiar with the Pacific Square Ballroom? A. I have been there, yes.

Q. Where is it located, sir?

A. At Pacific Highway and Ash Street, San Diego.

Q. That is right seaward or backs up to the railroad tracks there, does it not?

A. At the southwest corner of Pacific and Ash. The southeast corner of Pacific and Ash,—correction.

Q. Can you compare the two ballrooms in appearance?

Mr. Doherty: Object. No foundation laid. I object on that ground, and it is hearsay, incompetent, irrelevant and immaterial.

(Testimony of Harley E. Knox)

The Court: I don't know whether the mayor is an expert on that or not.

The Witness: No, sir, I am not.

The Court: All right. He says he is not.

Mr. Christensen: That is all. Thank you. You may [36] examine, counsel.

If you will look those over and let me know.

Mr. Warne: We are willing to stipulate, your Honor, that the three photographs, copies of which were handed to us—or, we are willing to stipulate that the four photographs which are presented to us by counsel are photographs from various angles of the interior of the Mission Beach Ballroom, taken in the daytime and when obviously no one was present.

The Court: Is that satisfactory?

Mr. Christensen: That is satisfactory, your Honor.

Mr. Warne: It represents its present, current condition?

Mr. Christensen: That is correct, sir.

The Court: Show them to the jury, and ask them if they want to look at them.

(The photographs referred to were marked as Plaintiff's Exhibits Nos. 1, 2, 3 and 4, and were received in evidence.)

Mr. Doherty: Shall I cross-examine?

The Court: Yes.

Mr. Doherty: Or shall I wait until the jury have an opportunity to look at the pictures, while they have their attention diverted, or shall I proceed now?

The Court: I think you may proceed.

Mr. Doherty: Proceed now?

The Court: Yes. [37]



(Testimony of Harley E. Knox)

Cross-Examination

By Mr. Doherty:

Q. Mr. Knox, during 1944 there were a great number of service men in the San Diego area, were there not?      A. Yes, sir.

Q. In other words, there were very heavy movements of troops by the Navy, Marine Corps and the Army out of San Diego during 1944, and that is when they were building up for the great battles in the Pacific?

A. At least they were there.

Q. That was really your maximum force that was moved out in 1944, was it not?

A. I am not an Army expert, a military expert. They were there in the city.

Q. You were mayor of the city during that time, were you not?      A. I was.

Q. Didn't you see great numbers of troops, and sailors and Marines, in greater numbers around San Diego during 1944 than you saw subsequent to that time and, in fact, prior to that time?

A. No, sir. I think that our concentration during all of 1942, '43 and '44 was about the same.

Q. In 1945 it slid off?      A. Yes. [38]

Q. Now, the military, and when I say "the military," I mean the Marine Corps and the Navy and the Army, have their own law enforcing officers, do they not? That is, the Military Police operating for the Marines and the Army and the Shore Patrol for the Navy?

A. I know there are both Shore Patrol and Military Police.

(Testimony of Harley E. Knox)

Q. And they operate in conjunction with your police force in San Diego? A. That's right.

Q. And you have sort of a working arrangement down there that your own police do not arrest the servicemen, but you sort of turn them over to the military authorities to be handled, do you not?

Mr. Christensen: To which we object as being immaterial to the issues here presented.

The Court: Overruled.

The Witness: That matter is something that I can't be too sure of, in that I would have nothing to do with the operation of the police department. I do know that in the regular prowl cars some of them have a Shore Patrol, a Military Police, and a civilian policeman in them, but just how that police operation is carried on I can't answer.

Q. By Mr. Doherty: You don't know then that there was a uniform understanding in your city between the military [39] authorities, and by that I mean the Navy, the Army and the Marine Corps, that their law-enforcing officers, the Shore Patrol men and the Military Police, were going to handle the men in uniform, and your civilian police were going to leave those to the military authorities, and you were going to attend to the civilians?

A. I knew of no such arrangement.

Q. You didn't know of any such arrangement?

A. No, sir.

Q. Now, at Mission Beach during 1944, there were members of the Shore Patrol over there when you went over with your wife on that occasion?

A. I saw none.

(Testimony of Harley E. Knox)

Q. You saw none? A. No, sir.

Q. Did you see any Shore Patrol representatives at all?

A. No, sir. There was a headquarters there, an office there, I think.

Q. But you did see men in uniform who were intoxicated? A. That is correct.

Q. And you saw that same condition on the streets in San Diego, didn't you? A. Occasionally.

Q. Just occasionally? A. That's right. [40]

Q. You saw it all over at Mission Beach and not on the streets in San Diego?

A. I didn't say none, sir. I say occasionally. The streets of the city of San Diego were policed to a far greater degree than were the streets of the Amusement Center at Mission Beach.

Q. Then you do know something about the police department in San Diego?

A. As an observation, as a civilian, yes, sir.

Q. And you went over to Mission Beach and made those observations? A. Yes, sir.

Q. How many times were you over there?

A. I imagine about six or eight times.

Q. In what period of time?

A. Over a period of the last—well, during, particularly during the period of the summer of 1944.

Q. By the way, on the City Council did you have a member, at the time the contract was awarded, by the name of Mr. Austin? A. Yes, sir.

Q. And did he have a son? A. Yes, sir.

Q. Is that the same son that has been employed by Mr. Finley over at Mission Beach since he got the lease? [41] A. Yes, sir.

(Testimony of Harley E. Knox)

Q. The same gentleman? A. Yes, sir.

Q. You know that son is being paid \$1,000.00 a month by Mr. Finley in that position, don't you?

A. No, sir, I don't know what his salary is.

Q. You knew he wasn't in the entertainment business or the amusement business until the City Council handed Mr. Finley the lease, don't you?

A. Are you referring to Mr. Austin?

Q. Yes.

A. Mr. Austin has been in the amusement business for a long time.

Q. His son?

A. I am talking about his son. I am talking about the councilman's son, Warner Austin. Yes, he has been in the amusement business.

Q. In the dance hall business?

A. No, I wouldn't say dance hall, no, sir.

Q. He had not been employed by Mr. Finley over at the Trianon, had he? A. No, sir.

Q. He was first employed after you gentlemen voted Mr. Finley the lease on Mission Beach?

A. I think that's right, sir. [42]

Q. Now, before Mr. Daillard,—let's go back to 1938 and 1939. Mission Beach was out of business, out of operation, wasn't it, and it was sort of a dead horse?

A. I think it had not yet been turned over to the city, sir.

Q. In other words, you got it by some arrangement with the taxing authorities, didn't you?

A. I think the State Park Commission turned it over to the city.

(Testimony of Harley E. Knox)

Q. It was owned at one time or was with the Spreckels' interests, and they turned it over to the State, and the State turned it over to the city?

A. I think that's right.

Q. And the contracts were entered into with Mr. Daillard, and what was done during the five years before Mr. Finley came in was the result of Mr. Daillard's efforts there, was it not?

A. I think the City of San Diego operated the Amusement Center for one year, and it proved to be a total failure as a municipal operation.

Q. A complete failure, wasn't it?

A. I would say it was a complete failure.

Q. Then Mr. Daillard came in? A. That's right.

Q. And he carried it on for the five years until Mr. Finley came in? [43]

A. I was under the impression that it was a three-year period with Mr. Daillard.

Q. How is that?

A. I was under the impression it was a three-year period with Mr. Daillard; that it was a three-year period that Mr. Daillard operated it. At least, his last lease was for a three-year period. I am quite confident of that.

Mr. Doherty: Well, we will go into that at the right time. I think that is all, Mr. Knox.

#### Redirect Examination

By Mr. Christensen:

Q. Mr. Knox, in addition to the military population that you have been asked about, has there been any increase in your population of the City of San Diego in recent years? A. Obviously an increase, yes, sir.

(Testimony of Harley E. Knox)

Q. As a matter of fact, there was a considerable increase, wasn't there? A. Yes, sir.

Q. There were many persons there by reason of war work? A. That's right.

Q. I am talking about civilians.

A. That is correct.

Q. Generally speaking, they were all there in 1945, too, weren't they?

A. As far as we can tell, they are all still there. [44]

Q. Mr. Knox, there is another question I wanted to ask. That is, Mr. Daillard was not the only operator of Mission Beach Amusement Center? A. Was he?

Q. There were others before him, weren't there? [45]

A. That was before my time.

Mr. Christensen: I see. All right. Thank you very much.

#### Recross-Examination

By Mr. Doherty:

Q. Just one question, Mr. Knox, about the people remaining there. Your principal industries have slowed down very materially during 1945, have they not?

A. That is correct.

Q. And if they stayed there, they were just either out of work or hoping to get employment?

Mr. Christensen: To which we object as calling for his conclusion or opinion.

The Court: I will let the mayor express his view on that.

A. Well, frankly, I can't give the answer to that question of where they are or what they are doing. I do know that we have about 20,000 Federally owned



(Testimony of Harley E. Knox)

housing units in the city. I know that during the war we have been able to build between nine and ten thousand. I know that we still have about the same number of applications that we had in 1944 for housing, and I know that they have discharged or terminated the employment of some 53,000 war workers. So where they are or what they are doing, I can't say, sir.

Q. By Mr. Doherty: In spite of all that, the people [46] think that San Diego is one of the finest places in the world to live, don't they?

A. Well, they know it, sir.

The Court: Mr. Mayor, I wanted to ask you just one question before you leave.

The Witness: Very well.

The Court: So that the jury can orient itself on this Pacific Square. Where is the City Hall of San Diego located?

The Witness: It is on Pacific Highway.

The Court: How far is it from this Pacific Square Dance Hall?

The Witness: Well, it is about the length of one block, sir, on the opposite side of the street.

The Court: So that is located down near the Santa Fe Railway, too, the freight house, isn't it?

The Witness: Yes, sir.

The Court: That is a new, modern, Class A structure, isn't it?

The Witness: Completed in 1939.

The Court: Housing the city officials of San Diego?

The Witness: The city and county governments.

(Testimony of Harley E. Knox)

Mr. Christensen: May I ask you, though, it is on the opposite side of that wide highway, though, isn't it?

The Witness: Yes, sir.

The Court: That is to say, the City Hall is nearer to the [47] bay front than the Pacific Square, is that right?

The Witness: Yes, sir.

The Court: Thank you, Mr. Mayor.

We will take our recess now, ladies and gentlemen, for a few minutes. Remember the admonition and keep it in terms inviolate. I wish you would occupy the jury room, ladies and gentlemen.

(Short recess.)

The Court: All present. Proceed.

Mr. Christensen: Mr. Austin, please.

DeGRAFF AUSTIN,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: DeGraff Austin.

Mr. Christensen: Oh, one thing. May I interrupt, your Honor? I had offered the certified copy of the bid. That is received as our Exhibit 1, is that correct?

Mr. Doherty: What is that?

Mr. Christensen: A certified copy of the bid.

Mr. Doherty: You offered it but the court sustained an objection.

The Court: That is correct.

(Testimony DeGraff Austin)

Mr. Christensen: It is not received?

The Court: I would judge so. [48]

Mr. Christensen: I offer it now, your Honor.

Mr. Doherty: The same objection.

The Court: The same ruling.

### Direct Examination

By Mr. Christensen:

Q. Mr. Austin, you are a member of the County Board of Supervisors of the County of San Diego, are you not, sir? A. Yes, sir.

Q. And prior to that time, you were a member of the City Council of the City of San Diego?

A. Yes, sir.

Q. As a member of the Board of Supervisors does your district include that portion of the City of San Diego which is commonly known as the Mission Beach Amusement Center? A. No, sir.

Q. You are acquainted with it, however, are you, sir?

A. Oh, yes.

Q. And you were a member of the City Council, were you not, during the year 1944? A. Yes.

Q. And were you acquainted with the Mission Beach Amusement Center at and prior to the year 1944?

A. Yes, sir.

Q. And ever since that time? A. Yes, sir. [49]

Q. You recall, do you, the fact that an advertisement for bids was made by the City of San Diego while you were a member of the City Council in the year 1944?

A. Yes.

Q. And you remember that Mr. Daillard, Mr. Finley, and several others made bids? A. Yes, sir.

(Testimony DeGraff Austin)

Q. You recall, also, that Mr. Finley's bid did not offer as great financial return as Mr. Daillard's?

A. That is correct.

Q. And that Mr. Finley was the successful bidder—or, to put that in another way, the lease was awarded to Mr. Finley?

A. That is right.

Q. Can you tell me the reason why that was awarded to Mr. Finley?

Mr. Doherty: Just a minute. That calls for his conclusion; it is not within the issues of the case, incompetent, irrelevant and immaterial.

The Court: Read the question, Mr. Reporter.

(Question read by the reporter.)

The Court: Well, presumably there is a record of that, Mr. Christensen. This is a body under either the Municipal Corporations Act of the state or a city charter of San Diego, which is required to keep a record of those proceedings. That [50] would show the action that was taken officially.

Mr. Christensen: I withdraw the question.

Q. Did you and the other members of the City Council and the mayor discuss and consider the various bids submitted?

A. Yes.

Q. You are familiar with the operation of Mission Beach under Mr. Daillard, are you?

A. Yes.

Q. Will you describe the operations that you observed there?

Mr. Doherty: Can this be subject, your Honor, to our running objection that it is incompetent, irrelevant and immaterial, hearsay, outside of the issues of this case?

(Testimony DeGraff Austin)

I would like to be heard just briefly—all right, your Honor, I will not argue.

The Court: I do not want any argument before the jury on questions of law unless I ask for it. It may be understood that you do interpose the objection and that the objection is overruled, without prejudice or without the court's view that it is not necessary to interpose objections *seriatim*.

Mr. Doherty: In other words, I need not repeat the objection each time to this line of testimony, but it is deemed to have been made and your Honor has overruled the objections?

The Court: That is right; the basic legal question that you raise by the objection that you have raised throughout [51] need not be repeated. That does not mean that the court is putting its approval upon the reception or the introduction of evidence that is otherwise objectionable.

Mr. Doherty: May I make one statement, not to argue? I think your Honor misunderstood one statement I made to the jury on my opening statement, which I think might be the basis of your Honor's ruling. Your Honor said in view of the statement I made to the jury that your Honor had overruled the objection.

My statement about the Daillard operation as contrary to the Finley operation was for the sole purpose of showing the financial return to Daillard and to Finley. In other words, where Daillard operated in a certain way he may have been successful, while Mr. Finley tried another plan and might have lost money, not because of any

(Testimony DeGraff Austin)

acts of defense, but because of his own inexperience or other reason that might occur.

That was what I presented to the jury only on the financial returns of Daillard as compared with Finley.

Now, I am not arguing the question. I just wanted to see if your Honor understood my position in my statement to the jury.

The Court: Proceed.

Mr. Christensen: There was a question.

(Question read by the reporter.) [52]

A. The operation was completely unsatisfactory from a standpoint of public morals. I might say that there was seldom a meeting of the City Council at which we did not have voiced an objection to the pattern of operation obtaining there. The telephone would ring constantly from outraged parents of young children in the neighborhood who took exception to the conduct of the amusement center.

We determined at the conclusion of the lease that we were either going to close it down or write a set of specifications which would be a credit to the municipality.

Q. You are familiar with the bid which Mr. Finley made, are you not? A. Yes, sir.

Q. Or proposal. Has he lived up to all of those promises? A. I would say yes.

Q. Will you describe the operation of Mission Beach Amusement Center, and particularly the ballroom, under Mr. Finley's management?

A. The place was completely renovated, a new roof put on it; it was painted inside and out, and constantly since the Finley operation there has been a force of



(Testimony DeGraff Austin)

uniformed attendants there at the expense of the concessionaire; and there has been no hard liquor permitted on the premises.

There has been a better operation all around in terms of [53] fewer arrests, fewer fights, better sanitation, better appearance of rest rooms and appearance of the dance hall. You feel now that you can permit your daughter to attend dances at Mission Beach.

Mr. Christensen: You may examine.

Cross-Examination

By Mr. Doherty:

Q. Mr. Austin, the City of San Diego has a police department? A. Yes, sir.

Q. And they are employed there to enforce the law?

A. Under the direction of the City Manager; yes, sir.

Q. And the City Council appoints the City Manager?

A. Yes, sir.

Q. And when these accusations or complaints came in that the law was being violated over at Mission Beach under Mr. Daillard's operation what did the City Council do about it?

A. We appealed to the Police Department and the Military Police to handle the situation.

Q. And did you also appeal to the City Manager that he should take care of it or you would get a new City Manager?

A. To the first part of your question, we appealed to the City Manager; yes.

Q. But you did not tell him that if he did not have [54] the law enforced that you would get a new City Manager? A. No, sir.

(Testimony DeGraff Austin)

Q. And apparently the Police Department did not pay any attention to your appeal to the City Manager, did they? The bad moral conditions continued over there?

Mr. Christensen: Just a moment. That is a compound question. Objected to on that ground.

The Court: Yes; that is compound.

Mr. Doherty: I will withdraw it.

Q. The bad moral conditions continued over at Mission Beach under Mr. Daillard after you heard these complaints? A. Yes, sir.

Q. And after you made the complaint to the City Manager, as the City Manager by the City Council, they still continued? A. Pretty largely; yes.

Q. And you made no attempt to investigate why the City Manager was not enforcing the law?

A. Why, yes; we questioned him, and on numerous occasions he laid it to the shortage of manpower within the Police Department and to the inadequacy of the Military Police.

Q. And didn't he tell you that the Military Police had charge of taking care of its own personnel?

A. I don't think that arrangement ever happened.

Q. In your experience down there you saw Military Police- [55] men around San Diego, didn't you?

A. Many times, yes.

Q. You saw Shore Policemen? A. Yes.

Q. That is, the Shore Police were in charge of the Navy personnel? A. I don't believe so.

Q. The Shore Patrol?

A. I don't believe there is any exclusive jurisdiction over military personnel by—I mean I do not believe that

(Testimony DeGraff Austin)

the Military Police handle exclusively military people, and the civilian police, civilian people.

Q. No. I am saying on the—

A. They travel, as a matter of fact, sometimes in one of the city prowler cars together.

Q. You remember of seeing along the streets of San Diego and over at Mission Beach men in Navy uniform with "S. P." on their armbands, Shore Police?

A. Oh, yes.

Q. Or Shore Patrol. Now, they enforced the law, the military law, as against the men in the Navy, didn't they?

A. And the civil law.

Q. What?

A. And the civil law as well.

Q. And you saw others in Marine uniforms and in Army [56] uniforms with "M. P." on their armbands, didn't you?

A. Oh, yes.

Q. And they enforced the law as against men in Marine uniforms and in the Army uniforms?

A. I would presume that would be very possible; yes.

Q. And you saw them over at Mission Beach, didn't you?

A. I never was able to see any of them on the occasions we attended Mission Beach in answer to, or, rather, to run down the source of these complaints.

Q. And didn't the City Manager tell you that he had appealed to the military authorities to take care of disorderly conduct by men in uniform, and that they promised they would?

A. Yes.

Q. And that is all he could do about it?

A. Well, I do not believe that is all he could have done about it.

(Testimony DeGraff Austin)

Q. You thought he could do more?

A. I believe so.

Q. But he did not do it? A. Apparently not.

Mr. Doherty: That is all.

Redirect Examination

By Mr. Christensen:

Q. The City Manager at that time was a Mr. Cooper, was [57] it not?

A. Yes. We felt we had a splendid manager.

Q. He is now dead, isn't he? A. Yes, sir.

Mr. Christensen: Thank you.

The Court: That is all, Mr. Austin.

Mr. Christensen: Mr. Crary, please.

GERALD C. CRARY,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Gerald C. Crary, C-r-a-r-y.

Direct Examination

By Mr. Christensen:

Q. Mr. Crary—

The Court: Just a moment, Mr. Christensen. I want to tell the jury that we have official reporters here in the courtroom and that they shall not make any notes of the testimony, the jury shall not make any notes.

Proceed.

Mr. Christensen: The question I commenced, I withdraw.

(Testimony of Gerald C. Crary)

Q. Mr. Crary, you reside in the City of La Jolla—or, pardon me, that portion of the City of San Diego commonly known as La Jolla? A. Yes, sir. [58]

Q. And you are in business there? A. Yes, sir.

Q. What is your business?

A. Laundry and dry cleaning.

Q. La Jolla is just a few miles from Mission Beach, is it not? A. About six.

Q. What is the name of your laundry there and dry cleaning place? A. Cleancraft.

Q. Pardon? A. Cleancraft.

Q. And, in addition to that, you are a member of the City Council of the City of San Diego, are you not, sir?

A. Yes, sir.

Q. You have been a member there now about three years, as I remember it; is that right?

A. A little over two years.

Q. A little over two. And you were a member of the City Council at the time—

A. A little less than two years. I beg your pardon.

Q. You were a member of the City Council at the time this bid was made by Mr. Finley? A. Yes, sir.

Q. Were you familiar with Mission Beach Amusement Center [59] prior to that time? A. Yes, sir.

Q. Visited there? A. I lived there.

Q. You lived right there?

A. Previous to living in La Jolla I lived in Mission Beach.

Q. You represent that portion of the City of San Diego in the council, do you not, sir? A. Yes, sir.

(Testimony of Gerald C. Crary)

Q. Then, is it a correct statement that you are familiar with Mission Beach and Mission Beach Amusement Center; is that right? A. Yes, sir.

Q. Were you familiar with its operations under Wayne Daillard? A. Yes, sir.

Q. Describe them to the jury.

A. I think it has been quite clearly given. The liquor condition was very bad. The condition of cleanliness and policing was very poor. The moral situation, from the standpoint of the neighborhood or people who owned homes adjacent to the Amusement Center, there was much objection by those people due to the carryings-on at the Center.

Q. Do you remember the promises made in the bids [60] submitted by Mr. Finley? A. Yes, sir.

Q. Has he lived up to those? A. Yes, sir.

Q. Describe the operations under Mr. Finley.

A. Well, one of the requisites in the bid was particularly on the part of servicemen to keep from overcharges, to keep the Center on the basis of giving honest values and giving a real place for not only the servicemen, but their friends, their women friends and family amusements.

The cooperation from the standpoint of the various organizations such as the P.T.A. and the Boy Scouts and the various Center organizations in coordinating councils has been very fine under Mr. Finley's regime.

Q. Has he established at his own expense a police force there? A. He has.

Q. A private police force, of course. Do you know whether or not he has made any improvements or alterations to the ballroom? A. Considerably.



(Testimony of Gerald C. Crary)

Q. Briefly describe them.

A. Well, it was renovated completely inside, and must have been done by an interior decorator who knew what they were doing. [61]

Q. The sound equipment, do you know that that was changed?

A. A very decided improvement. It was either changed or fixed.

Q. And the rest of the park, too, was it improved?

A. Very much.

Q. Repainted, among other things? A. Yes, sir.

Q. Prior to the time Mr. Finley had the Mission Beach did the City Council—were 'teen-agers permitted to attend the dances there?

A. No, sir; I don't believe so, that is, there were few parents who would let their children go there.

Q. What is the situation now?

A. There have been a number of 'teen-age dances given, and very successfully.

Mr. Christensen: You may examine, counsel.

#### Cross-Examination

By Mr. Doherty:

Q. Mr. Crary, you state that Mr. Finley made a substantial improvement at the Mission Beach in the way of changing structures, etc.?

A. (Witness nodding.)

Q. And was your answer "yes"? A. Yes, sir. [62]

Q. And he paid for those himself, did he?

(Testimony of Gerald C. Crary)

A. Not all. There were some improvements that the city made at their expense.

Q. The city made some improvements?

A. The city made some improvements.

Q. Yes.

A. But the improvements along what we would call the main way were all done at Mr. Finley's expense; the interior improvements were all at his expense. I might just add that, as I remember—I do not remember the contract in detail—but the painting, we painted the outside of the ballroom because we wanted it painted when we got it back, and this stipulated in the contract that it would have to be painted each year.

Q. Yes.

A. And it was also stipulated it was to be returned in a certain condition so far as the exterior was concerned.

Q. He just got a short-time lease there, didn't he?

A. Three years.

Q. He has a much heavier overhead than Mr. Daillard had, does he not, in the way of personnel, you say, guards and others around there?

A. He is running a much more satisfactory operation, more personnel, but as a result, getting a great many more people. [63]

Q. In other words, he has a great number more of people employed than Mr. Daillard had?

A. (Witness nodding.)

Q. Your answer is "yes"?

A. Yes, sir.

(Testimony of Gerald C. Crary)

Q. And he has charged—

A. I don't know that a great many, but I would imagine more. He has police.

Q. He has more personnel there than Mr. Daillard had?

The reporter, Mr. Crary, can't get your affirmative nods. I mean this gentleman here is taking all of this down and you must answer audibly. A. I see.

Q. And your answer was "yes"? A. Yes.

Q. And he has, generally, more personnel employed about the ballroom, also, than Mr. Daillard had?

A. Some, yes.

Q. Mission Beach is sort of a dual operation; one is the ballroom which was operated by Mr. Daillard, and then outside of the ballroom were these so-called concessions of various types, is that correct? A. Yes.

Q. And that is true also with Mr. Finley?

A. Yes. [64]

Q. And Mr. Finley charges much less in the way of admissions than did Mr. Daillard, I believe; that is correct, isn't it? A. Yes.

Q. And Mr. Finley also has reduced the price of concessions much below what Mr. Daillard was charging?

Mr. Christensen: To which we object as not being intelligible, "the concessions".

The Court: Read it, Mr. Reporter. I thought it was clear.

(Question read by the reporter.)

Mr. Doherty: By the "concessions" I mean what the concessionaires sell to the public.

(Testimony of Gerald C. Crary)

The Court: Well, I really do not understand it myself now.

Mr. Doherty: I will withdraw the question.

Q. Mr. Daillard's concessionaires sold soft drinks, sandwiches, and they had these dart games and other things of that sort, is that correct? A. Yes, sir.

Q. And the prices charged by Mr. Daillard for those activities—when I say “Mr. Daillard” I mean his concessionaires—was a greater price than charged by Mr. Finley? A. Much higher.

Q. Yes. And inside the ballroom the admission charged [65] by Mr. Finley for getting into the ballroom, per couple, was much below what Mr. Daillard had charged? A. I am not sure of that.

Mr. Christensen: Just a minute. That is objected to as calling for a conclusion or opinion, and the words “much below” particularly I am directing my attention to.

Mr. Doherty: I will withdraw it and get over that.

Q. The charge made by Mr. Finley for admission to the ballroom was less than was being charged by Mr. Daillard for the same admission? A. In some cases.

Q. How is that? A. In some cases.

Q. Well, did not Mr. Finley reduce the admission to the ballroom to 49 cents per person?

A. I am not fully acquainted with all the prices on the ballroom. I know that he put on special nights for military, when he turned it over completely to them at special prices, and did things that we had requested that they do in the contract.

Q. But what you do know about it is that Mr. Finley's prices were less than those being charged by Mr. Daillard? A. Yes.

(Testimony of Gerald C. Crary)

Q. Did you receive the call respecting excessive drinking by ex-servicemen over on Mission Beach by one of the [66] councilmen? A. Yes, sir.

Q. Did you take that up with the City Manager?

A. Yes, sir.

Q. And you told him you were receiving these calls?

A. Yes, sir.

Q. And the City Manager was in charge of the Police Department, was he not? A. Yes, sir.

Q. And did he tell you that the military were in charge of maintaining order among men in uniform; that that was their job?

A. Probably words to that effect.

Mr. Doherty: Yes. That is all.

#### Redirect Examination

By Mr. Christensen:

Q. And since Mr. Finley has been there, though, his guards have taken care of that to the end that there is now no rowdyism?

A. A tremendous improvement; in fact, I haven't had a single call this past year on the policing condition at Mission Beach.

Q. Do you know that as a matter of fact the revenue derived from the concessions, exclusive of the ballroom, has been approximately three times as much as that derived by Mr. [67] Daillard through his operation of those concessions?

Mr. Doherty: I object on the ground there is no foundation laid that this witness has knowledge of that.

(Testimony of Gerald C. Crary)

The Court: Well, it can be answered yes or no. Read the question, Mr. Reporter.

(Question read by the reporter.)

The Court: That can be answered yes or no.

Mr. Doherty: May I further object, your Honor, that he does not indicate revenue of whom—by Mr. Finley or by the city? It is indefinite on that ground.

The Witness: I can't answer it yes or no, Judge.

The Court: He says he can't answer it yes or no, so you will have to propound another question.

Q. By Mr. Christensen: Mr. Crary, the terms of the lease require Mr. Finley to pay two per cent of the gross receipts derived by him from the concessionaires, doesn't it? A. That is right.

Q. And upon that basis, keeping those two per cent in mind, have the returns made by Mr. Finley been less or greater than that by Mr. Daillard?

Mr. Doherty: That is objected to as incompetent, and immaterial, without the issues of this case.

The Court: Overruled. A. Greater.

Q. By Mr. Christensen: Can you tell me how much greater? [68]

A. I haven't seen the figures for the last four months.

Q. Prior to that what did it amount to?

A. Over double.

Q. Mr. Crary, another question: During the year 1945 were there more or less people at the beach than in the year 1944? A. More, in my opinion.

Mr. Christensen: Thank you, sir.

Mr. Doherty: Is that all?

Mr. Christensen: That is all, Mr. Doherty.



(Testimony of Gerald C. Crary)

Recross-Examination

By Mr. Doherty:

Q. In other words, Mr. Finley was successful in having more people go out to the Mission Beach Ballroom and Mission Beach area than Mr. Daillard had been able to induce to go there?

Mr. Christensen: To which we object as compound, because it includes both the ballroom and the amusement center, whereas my question was directed solely to the beach, Mission Beach Amusement Center.

Mr. Doherty: Well, I will withdraw that and see if I can get at it with this witness.

Q. The Mission Beach is a piece of land upon which is located some concessions, an amusement park of which a portion is a ballroom, is that right? [69]

A. Yes, sir.

Q. And when you say that there were more people went out to Mission Beach under Mr. Finley than when Mr. Daillard had it, you mean, do you not, that there were more people in the entire entertainment area, including the ballroom? A. Yes, sir.

Q. Have you got the same City Manager there you had during Mr. Daillard's operation? A. No, sir.

Mr. Doherty: That is all.

Q. By Mr. Christensen: He is Mr. Cooper, who is now dead, isn't he? A. That is right.

Mr. Christensen: Thank you, that is all. You may step down, please.

Mr. Leo Calland, please.

LEO B. CALLAND,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Leo B. Calland, C-a-l-l-a-n-d.

Direct Examination

By Mr. Christensen:

Q. Mr. Calland, your business, occupation or profession, sir, is what? [70]

A. At the present time, assistant to the City Manager for recreation, City of San Diego.

Q. And immediately prior to that what was your business or occupation?

A. I was director of welfare and District Recreational Officer for the 11th Naval District.

Q. With the rank of what, sir?

A. Lieutenant Commander.

Q. For what period of time were you so engaged?

A. From June, 1942 to June, 1945.

Q. What were your duties as such?

A. I was on the Headquarters Staff of the Commandant. I was directly in charge of all welfare and recreational functions of the 11th Naval District.

Q. And almost immediately upon your discharge, you went to work for the City of San Diego?

A. Yes, sir.

Q. What are your duties now as assistant to the City Manager of the City of San Diego in charge of welfare and recreation?

A. Playground and recreation department, and the school recreation are directly under me. I represent the

(Testimony of Leo B. Calland)

City Manager in all other phases of recreation in other city departments.

Q. While you were director of welfare and recreation for the 11th Naval District—the 11th Naval District, by the way, Mr. Calland, will you describe it to us? [71]

A. It is most of Southern California; extends from the Mexican border to Lompoc, and includes all of Arizona and New Mexico.

Q. While you were the director of recreation and welfare for the 11th Naval District did you become acquainted with the Mission Beach Amusement Center?

A. Yes, sir.

Q. And when did you become acquainted with it?

A. Immediately.

Q. One of the first things? A. Yes, sir.

Q. What was it that attracted your attention to it?

A. First of all, we had to make a survey of facilities available to servicemen on liberty and leave in the district; and in San Diego, the Mission Beach amusement zone at that time was one of the largest ones in operation. [72]

Q. And what did you find upon your inspection of Mission Beach?

Mr. Doherty: It is understood that is subject to our standing objection?

The Court: That is a pretty broad question there. I think I will sustain the objection.

Mr. Christensen: Let me withdraw it.

Q. By Mr. Christensen: Did you observe the conditions prevailing there, sir? A. Yes, sir.

Q. Will you describe them?

Mr. Doherty: Subject to our same objection, your Honor.

(Testimony of Leo B. Calland)

The Court: The same ruling. You may answer.

Q. By Mr. Christensen: Go ahead, sir, just tell these ladies and gentlemen what you saw there, what you found there?

A. Well, first of all, it was what is known as a gyp joint.

Mr. Doherty: That is a conclusion of the witness and I move it be stricken as prejudicial.

The Court: Yes. I don't know as that has any meaning in the nomenclature of the Federal Court. It may have, but elucidate that in our parlance, will you?

The Witness: Well, in other words, they charged the servicemen everything the traffic would bear, gave him as little service as possible, pushed him around, and I made [73] recommendations to the Shore Patrol that something be done about it, and it was found that we didn't have enough Shore Patrol available in San Diego to properly police the area, due to the number of places that were in operation that did not conform with decent conduct. To help the situation out, we took out part of our Navy bath house in Mission Beach and made a brig out of it.

Q. By Mr. Christensen: A brig is a jail in the Navy language?

A. A brig is a jail, and it would fill up so fast, it wasn't a solution to the problem.

Q. Was there any change since Mr. Finley took it over?

A. Mr. Finley took over in the last six months of my duty in the Navy, and during that time there was a great change in the operation.

(Testimony of Leo B. Calland)

Q. Describe the change.

A. We no longer needed the brig, for one thing. There was no liquor sold. The Shore Patrol were able to adequately—in spite of the lack of numbers—were adequately able to take care of the crowd, which was larger.

Q. Prior to the time Mr. Finley took over Mission Beach Amusement Center, was there any recommendation by your office, as director there, in favor of Mission Beach Amusement Center?

Mr. Doherty: That would be hearsay, and incompetent, irrelevant and immaterial. [74]

The Court: Overruled.

The Witness: A. It was suggested to the Shore Patrol, and discussed at great lengths, whether we would place Mission Beach out of bounds. It was decided we should not do it because there was really no other place for the servicemen to go.

Q. By Mr. Christensen: What was your recommendation after Mr. Finley got in operation there?

A. We had no recommendation. There was no difficulty.

Q. Now, since that time, as assistant to the City Manager of San Diego, in charge of welfare, you had some experience with Mission Beach Amusement Center, in general, and the Mission Beach Ballroom in particular, did you not, sir?

A. Not in an official capacity until just in the last few weeks.

(Testimony of Leo B. Calland)

Q. What, if anything, is the City of San Diego doing there now?

A. We are planning to run community dances starting the Friday—on Friday night, February 8th, and in which the recreation department will cooperate with Mr. Finley in conducting the dances.

Q. And have you been having teen-age dances there since Mr. Finley's operation?

A. Before I came to the city, they did.

Q. While you were still in the Navy? [75]

A. While I was still in the Navy.

Q. And that is still going on?

A. Those dances I am speaking of are to take the place of the teen-age dances we had before.

Q. During the time that Mr. Finley has had the ballroom, has he provided any facilities of entertainment for the servicemen of the Eleventh Naval District, to your knowledge?

A. Yes, sir.

Q. Can you tell us what?

A. Immediately after Mr. Finley took over the ballroom, I contacted him to find out what type of operation he was going to conduct, and when I saw the plans that he had, we immediately made arrangements to conduct a service dance on Tuesday nights during the winter and Monday nights during the summer, to which there would be no charge for the ballroom. My office was to supply the music.

Q. The Navy Band?

A. The Navy bands, and when we couldn't get bands, I will say that Mr. Finley provided us with the bands.



(Testimony of Leo B. Calland)

One of the Navy stations would take over the operation of the dance, the conduct of the dance.

Q. Did Mr. Daillard cooperate like that with you?

A. No, sir.

Q. In addition to those things, you have mentioned, [76] did Mr. Finley put on any shows for the personnel of the Eleventh Naval District? A. Yes, sir.

Q. Tell the ladies and gentlemen about that.

A. Prior to Mr. Finley coming into San Diego, we were never able to get bands that played at Pacific Square or Mission Beach Ballroom to entertain at the hospital and the other stations in the area. When Mr. Finley took over Mission Beach Ballroom, we scheduled every week one of his bands to entertain the service personnel, and usually one of their engagements would be at the hospital.

Q. Well, how much did he charge you for doing that?

A. Free.

Q. Have you had any occasion to observe the effect, whether that would cause more people to attend the dance, or fewer,—the activities you have just described of Mr. Finley?

A. I believe it increases the attendance.

Q. What is the reason for your opinion on that?

A. Just prior to Mr. Finley taking over Mission Beach Ballroom, Lyle Thayer of M.C.A. called me up and requested me to book Freddy Martin for a couple of engagements, because he was coming to San Diego to play at Mission Beach, and after Martin made these appearances at the Naval Station he outdrew the name band that was playing at Pacific Square. [77]

(Testimony of Leo B. Calland)

Q. That was Paul Martin, wasn't it?

A. No, it was Freddy Martin.

Mr. Christensen: You may examine, counsel.

Cross-Examination

By Mr. Doherty:

Q. I am going to call you Mr. Calland, Commander. You had charge of the entire Eleventh Naval District?

A. Yes, sir.

Q. How often did you go out to Mission Beach?

A. I made at least 50 personal inspections of Mission Beach during my tour there, because we had a Navy bath house, and a number of other operations, in addition to our general activities, in connection with the amusement zone.

Q. During the time that Mr. Daillard was operating there, was that the time that the new men were coming in and going overseas, primarily?

A. Well, I don't know where they were going or coming from, but they were coming in both directions most of the time.

Q. Weren't there more men headed out across the Pacific in that period?

A. The majority were going out, yes.

Q. And in 1945 the majority of them were heading back; is that right?

A. Yes, sir. [78]

Q. Have you noticed any difference in the attitude of the boys, as between those that were going over and those that were coming back, as regards their being more seasoned and level-headed on their return than when they were going out?

A. I am afraid you opened up on that, sir.

(Testimony of Leo B. Calland)

Q. How is that?

A. I am afraid you opened up on that, sir, because I conducted 70 dances a month at Navy Athletic Field, which is a Navy institution, and I found we had a great deal more trouble in handling the men coming back from overseas, and from ships, than we did with recruits.

Q. I am not speaking of the men that were coming off of the ships and going back out again. I mean the veterans.

A. The veterans, I am speaking of.

Q. Didn't you find the veterans were not inclined to spend as much money as those on the way out?

A. No, sir.

Q. You found the veterans spent more money?

A. Yes, sir.

Q. You saw that the attendance at Mission Beach during 1945 under Mr. Finley was more than under Mr. Daillard's operation?

A. On the total beach operation, yes, sir.

Q. But you think that is attributable to the fact that [79] Mr. Finley in his public relations took a different viewpoint from Mr. Daillard in that he appealed to matters of public interest more?

A. That is a matter of opinion, but I believe that the type of operation he conducted attracts more people than it did before.

Q. And you attribute the large attendance there, in part at least, to Mr. Finley's public relations approach as being better than that of Mr. Daillard's?

A. Yes, sir.

(Testimony of Leo B. Calland)

Q. You, of course, are not familiar with the prices that were being charged by Mr. Daillard at the dance hall, as compared with what Mr. Finley charged?

A. The prices varied at the dance hall according to the band that is playing. A name band has a larger admission price than a house band or B-bands.

Q. In other words, Mr. Finley charges more for a name band than he does for the house band?

A. Yes, sir.

Q. And you observed that, did you? A. Yes, sir.

Q. You saw Mr. Finley having name bands there, did you? A. He has an occasional name band.

Q. Yes. And at other times he had house bands?

A. Yes, sir. [80]

Q. At other times he had other forms of entertainment? A. Yes, sir.

Q. What did he charge for the house band, do you know, for admission to the dance hall?

A. The lowest price that I have noticed was 49 cents, plus tax, for an individual.

Q. And Mr. Daillard charged more than that, didn't he? A. Mr. Daillard doesn't play this type of band.

Q. Well, I am asking you if the admission at Mr. Daillard's operation wasn't more than 49 cents?

A. Yes, sir.

Q. Now, when Mr. Finley had name bands there, what did he charge per individual for admission to the dance hall?

A. I am not exactly familiar with that, because it will vary with almost each appearance.

Q. Yes. You didn't keep a record of the name bands that Mr. Finley had there? A. No, sir.

(Testimony of Leo B. Calland)

Q. You noticed while Mr. Daillard was there that he had a lot of western bands? A. Yes, sir.

Q. And Mr. Finley didn't go very much for western bands? A. Yes, sir.

Q. He had a different type of entertainment? [81]

A. He had a much better type of entertainment.

Q. Well, judging by the crowd, the attendance, I would say you are correct. In other words, he was successful in getting more people to go out to Mission Beach by his type of entertainment than what Mr. Daillard was able to get to go there?

A. Well, the crowd that went to the western bands was very rowdy and drunken.

Q. But not as large a crowd as Mr. Finley has been able to bring there?

A. I believe Bob Wills Western Band drew the largest crowd in Mission Beach Ballroom, and that was by Mr. Daillard, and it was a western band.

Q. That is just one band?

A. It is the Bob Wills band. It is one of the typical western bands, probably the best one we have had in San Diego.

Q. And that was a western band? A. Yes.

Q. But Mr. Finley was successful in getting more people to go out to the Mission Beach under his type of bands than Mr. Daillard was, with the exception of the Bob Wills band?

A. No, sir. I said more people attended the beach, but not the ballroom.

Q. More people attended the beach?

A. The beach, the amusement zone covers several blocks, [82] and I do not have the figures on the

(Testimony of Leo B. Calland)

ballroom, but I do know that more people are on the streets and at the beach under Mr. Finley than under Mr. Daillard.

Q. Yes. In other words, there has been a greater crowd into the park, generally, and into the Amusement Center than there was while Mr. Daillard had it?

A. Yes, sir.

Q. You made no effort to find out the comparative figures on the ballroom, did you? A. No, sir.

Q. Now, respecting the drinking among the servicemen, a lot of them had their own bottles, didn't they?

A. Yes, sir.

Q. And could they buy bottled goods on the recreation center? A. Yes, sir.

Q. There was a concession there for that, was there?

A. Yes, sir.

Q. And that concession was discontinued by the City Council under the new contract with Mr. Finley?

A. Yes, sir.

Q. Under the concession Mr. Daillard had, he was permitted to have a bar? A. Yes, sir.

Q. And under Mr. Finley's contract with the city, that [83] bar was discontinued?

A. Except for beer.

Q. Except for beer. And that was sold there, was it, while there were teen-aged children attending the dances? A. No, sir, not in the ballroom.

Q. They sold beer around the recreation center, though? A. That's right.



(Testimony of Leo B. Calland)

Q. Don't you attribute the fact that there was more intoxication among the ex-servicemen to the fact that those concessions did sell liquor than to any other cause?

A. Probably, but I couldn't—they carry a lot of liquor around over town, too.

Q. You have more Shore Patrol men now per man than you did in 1942, '43 and '44, do you not?

A. No, sir, the Shore Patrol are being cut down. I believe the largest figure we had on the Shore Patrol in San Diego, and I am not exactly qualified to speak, except from my memory, was around 400 Shore Patrol men that were allowed for the San Diego area.

Q. But your service personnel has gone down, has it not?

A. And the Shore Patrol has been likewise cut down.

Q. And the number of Marines and soldiers there are far less than they used to be?

A. Yes. [84]

Q. And, of course, they have reduced their military police force?

A. That's right.

Q. Did the city during the great increase in population increase its police force?

A. They were not able to do so.

Q. They did not do so?

A. They could not. Men were not available.

Q. Wasn't there an understanding between the military, and by the military I mean the Naval, as well as the Army and Marine Corps, that the military uniformed officers would handle the servicemen in uniform, and the civilian police would generally leave them alone?

A. That was a gentlemen's agreement, I believe, between the men on duty. However, a policeman had

(Testimony of Leo B. Calland)

authority over service personnel, and the Shore Patrol had authority over civilians, over a civilian's rights.

Q. But by a gentlemen's agreement they separated their duties?

A. Whenever possible they would have Navy Shore Patrol take care of Navy and Marine personnel, and the Army take care of the Army.

Q. Yes.

Q. However, the city police had full authority over the service personnel also. But it was a matter of [85] eliminating as much friction as possible between the police and the Shore Patrol, so that they usually went in pairs, and the Navy would take care of the military personnel, and the police would take care of civilians.

Q. Oh, yes. We understand that because a man is in uniform, he is still an American citizen and is subject to the civil law.

A. Yes, sir.

Q. But by reason of an arrangement so as to reduce friction you let each uniformed group handle its own personnel?

A. I believe the men worked that out among themselves rather than by any directive from the top.

Mr. Doherty: That is all, Lieutenant, or, rather, Commander.

The Court: If you are going into it further, we will have it in the morning.

Mr. Christensen: Might I ask just one question, and he can be excused. He wanted to get away today.

(Testimony of Leo B. Calland)

Redirect Examination

By Mr. Christensen:

Q. Is it true between, let us say, the 1st of January, 1945, and VJ-Day that there were more or less members of the Armed Forces in the City of San Diego than there were in the preceding year? [86]

A. I could not give exact figures on that because in San Diego we were just so crowded all the time we never tried to count them.

Mr. Christensen: That is all.

The Court: Ladies and gentlemen, we will take a recess until 10:00 o'clock tomorrow morning. Remember the admonition and keep its terms inviolate.

(Whereupon, at 4:40 o'clock p. m. an adjournment was taken until 10:00 o'clock a. m., January 30, 1946.) [87]

Los Angeles, California, Wednesday, January 30, 1946,  
10:00 a. m.

The Court: All present. Proceed, gentlemen.

Mr. Doherty: If the court please, may I ask counsel for plaintiff a question, upon what theory he is offering testimony by public officials and others as to the drinking conditions and other conditions which they have testified to as existing at Mission Beach under the management of Mr. Daillard and the comparative conditions existing there under Mr. Finley?

The Court: Yes, sir.

Mr. Christensen: Yes, your Honor; I will be glad to answer the question.

The evidence has, at least inferentially, and will show that Mr. Daillard had a contract with Music Corporation of America for a period of several years—I think since November, 1941—by the terms of which M.C.A. furnished name bands to Wayne Daillard for his use at the Mission Beach ballroom.

That the Mission Beach ballroom and the Mission Beach Amusement Center, in general, are operated, managed and conducted in such a manner and maintained in such a condition that it would appeal only to the rowdy element at the best; that the conditions were so bad that the city officials became alarmed; that the Navy became alarmed; that the bid was [89] let to Mr. Finley.

Mr. Finley made extensive alterations, modernizations and improvements to the Mission Beach Amusement Center, in general, and to the ballroom in particular; and that he has maintained it ever since that time in such a condition and in such a manner that it appeals to and is frequented by the better element of the City of San Diego.

That, as a matter of fact, there are more people now there than there were before; that it is recommended now by the welfare organizations; and that during the operations of Mr. Daillard it was on a more or less haphazard basis, but notwithstanding those facts, Mr. Daillard was able to make money in the operation of the Mission Beach ballroom and that that is attributable to the fact that name bands were furnished by M.C.A. to Wayne Daillard; and that it is a condition precedent to the successful operation of a first-class ballroom that name bands be used and employed.

Mr. Doherty: Then, it is solely for the purpose of showing the damages in the way of the loss of profits that Mr. Finley has suffered at Mission Beach that this testimony is being introduced?

Mr. Christensen: I think I would like to stand on my statement that I have made, unless it is ambiguous to you, Mr. Doherty.

Mr. Doherty: Well, it only goes to the element of the damages; it does not involve any matter of the interstate [90] commerce or monopoly or restraint of trade. In other words, you do not contend that these conditions that existed at Mission Beach, as claimed by these witnesses, was in restraint of trade or monopoly, or for any other purpose and act of interstate commerce, but solely for the purpose of determining what the damages were, suffered by Mr. Finley?

Mr. Christensen: We do not contend that the evidence so far shows, nor that such evidence would show the interstate character of the business, nor that it would show a restraint of trade.

Does that answer your question, Mr. Doherty?

Mr. Doherty: Well, can you go one step further and say it is solely for the purpose of a basis of introducing further evidence to show the damages suffered or claimed by Mr. Finley?

Mr. Christensen: I think it is one of the elements that goes to show that. [91]

The Court: Very well. You understand, ladies and gentlemen, where there is an agreement between counsel before you in the form of a stipulation, that is what it is called in the court room, it means an agreement between counsel, and you are to accept that agreement without any further evidence on it. You have heard what the agreement is, and you must accept it for what it is worth.

Mr. Doherty: I don't want it understood, your Honor, that we have agreed to his theory. I have asked him to state his theory so that I may be more intelligible in my objections. I have heretofore objected to this line of testimony offered on the ground it is hearsay, incompetent, irrelevant and immaterial, and not within the issues of the case, and I want to add to that also—I have added that there was no foundation laid, that there was no promise to connect it up with any combination or other alleged act in the pleadings, and I want to add to that now that the basis of it so far as damages are concerned is entirely speculative, and that it is not a basis for evidence to be introduced on those issues.

I am not agreeing to his theory. I am merely trying to ascertain what it is, and I am vigorously and will vigorously oppose it, as I do not think it is within the issues of the case for the reasons that I have already indicated.

The Court: Very well. Proceed. Call the next witness.

Mr. Christensen: Bruce Weston, will you come forward, please? [92]



## BRUCE WESTON,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

## Direct Examination

The Clerk: Will you state your name, please?

The Witness: Bruce Weston.

By Mr. Christensen:

Q. Mr. Weston, your business, occupation or profession, sir, is what?

A. Lieutenant of police, San Diego.

Q. Do you have a definite station or area of which you are in charge?

A. I do. I have charge of the beach areas, all the beaches.

Q. That includes, I take it, from La Jolla to and including Mission Beach?

A. Yes, sir, from La Jolla to Fort Rosecrans, which is south of Mission Beach.

Q. Very well. For what period have you been so employed, sir?

A. Three years in that area.

Q. You have been employed in the police department of the City of San Diego for what period, sir?

A. Eighteen years.

Q. Are you familiar with the Mission Beach Amusement [93] Center in San Diego?

A. Yes, sir.

Q. And with the ballroom?

A. Yes, sir.

Q. Are you familiar with the conditions prevailing there prior to the time Mr. Finley got the lease?

A. Yes, a short time.

(Testimony of Bruce Weston)

Q. During that period of time will you describe the conditions as you observed them.

Mr. Doherty: May it be understood, your Honor, that this testimony is offered over the objection I have just made recently, and have made previously, without repeating specifically what the objection is?

The Court: It may be so understood, and the objection is overruled as heretofore stated in the record.

The Witness: May I have the question again?

The Court: Read it, please.

(The question was read.)

Mr. Doherty: That is prior to the time Mr. Finley took over, as I understand?

Mr. Christensen: Yes, I mean immediately prior thereto and during the time Mr. Daillard was operating the Amusement Center.

The Witness: A. Well, I don't know just how to answer it, just what you mean. [94]

Q. By Mr. Christensen: Describe it in your own way, and in your own words, if you will.

A. Well, the beach area, the Mission Beach area, takes in the dance hall, skating rink, all the Amusement Center. I hardly know just what to state other than that was over a year, or a year and a half ago, fifteen months ago. I can put it this way, if I may, that when Mr. Finley's organization took over, as far as police observation was concerned, my duties there, there seemed to be a definite improvement in the operation of the concessions; I mean in the orderliness, and the dance hall, and cooperation from the management with the police. That is about the best I can state it.

(Testimony of Bruce Weston)

Q. Are there any police problems there now or at any time during Mr. Finley's operation?

A. No, since Mr. Finley has been there, there has been 100 per cent cooperation by the management with the police. Any suggestion for betterment that I would make, and when I say "I" or "we" I mean the police, was adopted immediately.

Q. The place is now orderly, is it?

A. Fine, first-class, yes, sir.

Mr. Christensen: Thank you. You may examine, Mr. Doherty. [95]

#### Cross-Examination

By Mr. Doherty:

Q. Mr. Weston, you were in that area during most of the war period?

A. Well, most of the war period, yes.

Q. And during the so-called war period there was a great influx into San Diego of defense workers, was there not?

A. Yes, sir.

Q. Also, there were great crowds of people who came in, relatives and friends of servicemen who were stationed there and were being shipped out?

A. Yes, the city was very crowded with every sort of people, I would say.

Q. You might say there were three general types that were there during this period to which we are referring that were not there before the war or the preparation for the war, and I am going back now to early 1941: one is the great increase in the number of men in uniform over normal times?

A. Yes, sir.

(Testimony of Bruce Weston)

Q. And there was a great increase in the number of defense workers who had come from outside communities into San Diego? A. Yes, sir.

Q. And there was a great increase in the number of friends and relatives, and others, who came there to visit the [96] men in uniform and also to visit the defense workers, who had come there from outside of the city or out of the state? A. Without a doubt, yes, sir.

Q. I mean, you observed that, did you not?

A. Yes.

Q. Did you notice that during that period, '41, '42, '3 and '4, there was a noticeable increase in the consumption of intoxicating liquors by that group over what had happened or existed prior to that time?

A. Well, I cannot answer it according to that group. I don't like to use that term. I would say there is no difference in groups. There is just more of everybody, and early in the war I was a jailer, and I particularly noticed much more drinking results.

Q. There was a general breaking down of standards all the way along the line by every one, as you observed?

A. Seemingly so.

Q. In other words, drinking on streets, and people going along on the public streets with bottles of liquor in their hands, that did not exist, as you observed, in peacetime?

A. Well, I think that is general everywhere. That is just a thought there.

Q. In other words, the police problems in San Diego were much more difficult during this period than they were in peacetimes? [97] A. Yes, sir.

(Testimony of Bruce Weston)

Q. And that was of all types of police work, particularly fights and disorderly conduct, and heavy drinking, and association between boys and girls, and men and women, and things of that sort? A. Yes, sir.

Q. That made your problem much heavier in those years than had existed prior to that time?

A. Yes, sir.

Mr. Doherty: I think that is all.

#### Redirect Examination

By Mr. Christensen:

Q. That condition continued to prevail until VJ-Day, didn't it? A. Around the city in particular, yes.

Q. As a matter of fact, it still continues, does it not, sir? A. Yes, sir.

Q. So that the condition was the same on January the 4th, of 1945, as it was during all of 1944, wasn't it?

A. You are speaking now of the city in general, or just Mission Beach?

Q. No, I am speaking of the city in general.

A. Yes, pretty much so; very little difference as yet. The city is crowded yet. [98]

Mr. Christensen: That is all.

#### Recross-Examination

By Mr. Doherty:

Q. I forgot to ask one question. Who was the manager under Mr. Finley during the early part of 1945, if you know? A. Mr. Birdell.

Q. Was there a Mr. Mulligan also there, or did you know him?

A. I knew a Mr. Mulligan, yes. He worked under Birdell.

(Testimony of Bruce Weston)

Q. Pardon me?

A. He worked under Birdell, I believe. Birdell was Mr. Finley's manager.

Q. Yes, he worked under Mr. Finley's manager?

A. Yes.

Q. Was Mr. Mulligan there also under Mr. Daillard?

A. That I do not remember, or know. I never knew Mr. Daillard.

Q. You never met Mr. Daillard? A. No, sir.

Mr. Doherty: That is all.

The Court: Thank you. You may step down.

Mr. Jaffe: Joseph Zucca, please. [99]

JOSEPH ZUCCA,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please?

The Witness: Joseph Zucca.

The Clerk: Z-u-c-c-a?

The Witness: That's right.

By Mr. Jaffe:

Q. Mr. Zucca, your business or profession is what?

A. Managing director of the Meadowbrook at Culver City.

Q. That is a ballroom, a first-class ballroom in Culver City? A. That's right.

Q. How long have you been so engaged, sir?

A. About seven years. [100]



(Testimony of Joseph Zucca)

Q. In your business as the operator of the ballroom in Culver City have you heard the expression used "name bands"?

A. I did.

Q. What is your definition of a name band?

Mr. Doherty: I object to it as incompetent, irrelevant and immaterial; no foundation laid.

The Court: I presume if it is a matter of technical knowledge, that there should be some qualifications other than the mere fact that he is conducting a ballroom. Objection sustained to the question as it was propounded.

Q. By Mr. Jaffe: Prior to your occupation as manager of the Meadow Park ballroom what was your occupation, sir?

A. Up to six months ago I was the owner, and six months hence I have incorporated and am now secretary-treasurer and manager.

Q. Have you ever bought bands? A. Yes.

Q. Have you ever booked bands? A. Yes.

Q. Do you know what bands are? A. Yes.

Q. Do you know the term or expression "name band"? A. Yes.

Q. What would you define the term "name band"?  
[101]

A. In my particular case, I believe a name band is a person who has organized a group of musicians and in a manner that, through radio and recording transcriptions, has become nationally known.

Q. The band is accepted nationally? A. Yes.

Q. That it enjoys its national reputation through the medium of recordings, through the medium of radio, that it is a boxoffice attraction?

A. Yes; it is a boxoffice attraction.

(Testimony of Joseph Zucca)

The Court: Just a minute. Suppose you ask him, instead of stating it and then asking him to approve it, so that then the court will know exactly what his qualifications are, rather than yours. I think I know your qualifications.

Mr. Doherty: And, may I suggest to the witness, this room is a difficult room for me to hear in. I do not know whether the jurors over here can hear this witness or not at times. Will you just raise your voice a little bit, please?

The Witness: All right.

The Court: If the witnesses will speak so that the last juror can hear him or her, I think we will all be able to hear you clearly.

The Witness: All right.

Q. By Mr. Jaffe: Mr. Zucca, as the operator of a first- [102] class ballroom, is it necessary from a financial standpoint that the operator of this ballroom have access to name bands?

Mr. Doherty: Just a minute. That is incompetent, irrelevant and immaterial, not the subject of expert testimony, no foundation laid, hearsay, and not within the issues of the case.

The Court: I think that question has the same vice that the others had. It does not seek to have the witness disclose his knowledge. It states what counsel thinks are the elements that he desires to prove, and asks for a categorical answer which does not give the court or the jury any idea as to what his qualifications are. Objection sustained.

Q. By Mr. Jaffe: What is the value of a name band to a ballroom operator?

Mr. Doherty: That is the same objection, your Honor. I am not going to argue it. It depends upon location.

(Testimony of Joseph Zucca)

The Court: Overruled.

The Witness: Well, the value—will you repeat the question?

The Court: Yes. Read it, Mr. Reporter.

(Question read by the reporter.)

A. I can only answer that question in my particular case.

Q. By Mr. Jaffe: Please do.

Mr. Doherty: Objected to on the ground that is not [103] within the issues of the case; it is hearsay, incompetent, irrelevant and immaterial.

The Court: Well, it is really a matter for the court, in the first instance, as to qualifications; so I will ask a few questions. How long have you been connected with ballroom activities or of public entertainment?

The Witness: About seven years.

The Court: Where has your experience been during that time?

The Witness: I was in Culver City as the owner of the Casa Manana at that time.

The Court: I am not acquainted with these places by name and I would not know the Casa Manana. What size or activity does that place take in the entertainment field? I do not mean for you to tell us what you think, but what is the status of it?

The Witness: As to size, you mean?

The Court: How large is it and how large an orchestra does it have?

The Witness: It will accommodate about 2,000 people.

The Court: And the dance floor will accommodate about how many?

(Testimony of Joseph Zucca)

The Witness: About 500 couples.

The Court: That is a comparison for Terpsichorean activity, is it? [104]

The Witness: That is right.

The Court: You understand what I mean—for dancing?

The Witness: Yes, sir.

The Court: And what size bands have you employed there normally?

The Witness: Varying anywhere from 15 musicians to 30 at one time.

The Court: Has that been during this entire period of 7 years?

The Witness: Yes, sir.

The Court: That you have had that experience?

The Witness: Yes, sir.

The Court: Both as the proprietor of the concern and as the manager-executive in the conduct of it?

The Witness: Yes, sir.

The Court: I think that he is qualified.

Now, you may read the question. Objection overruled.

Mr. Jaffe: There is a pending question.

(Question read by the reporter.)

A. The value of a name band in my particular case is rather essential, due to the competition that I have in my particular locality.

Q. Could you operate profitably without name bands?

Mr. Doherty: That calls for a conclusion of the witness, entirely speculative, incompetent, irrelevant and immaterial. [105]

The Court: Yes; the way it is phrased it does not give the jury—I want you to understand, ladies and gentlemen, that the court's questions to the witness were

(Testimony of Joseph Zucca)

merely for the purpose of informing the judge as to whether the witness was qualified to express an opinion on these matters. The weight of his evidence is for you and not for the judge.

As to the witness' qualifications, if he is offered as a so-called expert witness—one who, because of his knowledge or skill or experience of certain activities of life, whether artistic, scientific or professional, may give an opinion—that is one of the exceptions to what is called the incompetency of the witness, or the hearsay rule. But that is a question of law for the trial judge, in the first instance, to determine whether the witness offered is qualified; and that qualification does not depend upon certain features that are generally accepted, of advertising or publicity or any features of that kind; it depends upon experience and knowledge to disclose one's observations from the witness stand, under oath. And I am not indicating anything by that ruling as to what, if any, value or effect you give the testimony of any witness. That is for you.

Read the question, Mr. Reporter.

(Question read by the reporter.)

The Court: Just a minute. The objection is sustained.

Q. By Mr. Jaffe: Mr. Zucca, are you familiar with the [106] financial arrangements made with bands that appear in your ballroom?

A. I am.

Q. Have you personally made money when a name band did not appear at your ballroom?

Mr. Doherty: Incompetent, irrelevant and immaterial, not the subject of expert testimony.

The Court: Overruled.

The Witness: Would you read that question?

(Testimony of Joseph Zucca)

(Question read by the reporter.)

A. Certain particular weeks I have and certain times I have not.

Q. By Mr. Jaffe: Where do you get your bands from?

A. Different agents in Los Angeles.

Q. Who did you get the great majority of your bands from?

A. At the present time, I have a band that is booked independently and I bought it direct. Prior to that, I have had M. C. A. bands, played General Amusement bands.

Mr. Jaffe: You may cross-examine.

Cross-Examination

By Mr. Doherty:

Q. In other words, you procured some of your bands through the Music Corporation of America?

A. Yes, sir. [107]

Q. And you secured some of your bands through the William Morris Agency? A. Yes, sir.

Q. And you secured some through the General Amusement Corporation? A. Yes, sir.

Q. And sometimes you get the entertainment from the Fredericks Brothers Agency? A. Yes.

Q. And sometimes you have dealt direct with the band leader? A. Yes, sir.

Q. And made your own arrangement with the band leader? A. Yes, sir.

Q. And even though that band leader had an agency contract with an employment agent?

A. That I am not familiar of.



(Testimony of Joseph Zucca)

Q. The Meadowbrook is located on West Washington Street, on the right-hand side on your way to Culver City, is it not?

A. That is right.

Q. It sits back there from the road and used to be known as the Cotton Club?

A. Yes, sir.

Q. And then, under some other management, was known as the Casa Manana. Were you there during the operation as the [108] Cotton Club?

A. Not as the Cotton Club, no.

Q. But as the Casa Manana were you there?

A. Yes; I was the owner then.

Q. Then, more recently it has been known as the Meadowbrook? A. Yes, sir.

Q. Now, you speak about what name bands are. Do you know a great number of bands? A. Yes.

Q. Is Henry Busse or Busse one of those bands?

A. Yes; I would say he was a name band.

Q. He plays locally and throughout the country, does he not. A. Yes.

Q. And would you say that Tiny Hill was also a name band? A. Yes.

Q. And would you say that Sully Mason was a name band? A. Beg pardon?

Q. Sully mason?

A. I don't believe I have heard of him.

Q. You don't know him. Do you know Eva Leonard band by reputation? A. Yes. [109]

Q. Is that a name band? Did I ask you about Ancil Hill? Is that a name band?

A. I believe that is a local name band.

(Testimony of Joseph Zucca)

Q. And Shorty Sherock, is that a name band?

A. I believe so.

Q. And Carlos Molina? A. Yes.

Q. And Muzzy Marcelina? A. Yes.

Q. And Chris Cross?

A. I don't believe I have heard of him.

Q. Frankie Carl? A. Yes.

Q. He is a name band? A. Yes.

Q. And Tony Pastor? A. Yes.

Q. And, of course, without any hesitancy you will say Jimmie Dorsey and Tommy Dorsey? A. Yes.

Q. Eddie Miller? A. Yes.

Q. Glen Gray? A. Yes.

Q. And Pinkie Tomlin? [110] A. Yes.

Q. And Boyd Rayburn? A. Yes.

Q. This particular time in recent years, I think Tommy Dorsey is considered the "tops", isn't he, in drawing? A. That is right.

Q. In other words, if you can get him in, you are sure of a big crowd? A. That is right.

Q. Is that right? A. That is right.

Q. It costs lots of money, though, doesn't it?

A. Yes, sir.

Q. You have got to raise your admission prices; you have got to get a big crowd in order to make it pay?

A. Yes.

Q. Because of the big overhead, is that right?

A. That is right.

Q. You can't draw in for two nights, a two-night performance, on 12 or 13 or 14 thousand people; it would not pay, would it? A. That is right.

(Testimony of Joseph Zucca)

Q. You would have to draw a big crowd like that to meet the scale demanded by Tommy Dorsey?

A. That is right.

Q. Is that right? [111]                      A. That is right.

Q. There are ballrooms that operate successfully, do they not, without accentuating or emphasizing name bands?

A. I believe there are many of them; yes.

Q. Which?

A. I believe there are many of them that do.

Q. Yes. It depends a great deal upon the crowds that go there, the type of entertainment, the type of management and other factors, does it not?                      A. Yes.

Q. You are familiar, more or less, with the Palladium, aren't you?                      A. Yes.

Q. That is the biggest operation of its kind in Southern California, isn't it?                      A. That is right.

Q. So far as you know, it is one of the biggest in the United States?                      A. That is right.

Q. It is out here in Hollywood and Sunset Boulevard?

A. That is right.

Q. In fact, they operate with comparatively few bands, do they not?                      A. They have name bands.

Q. They bring them in just occasionally, don't they? [112]

A. No. They have name bands continuously.

Q. Have you been in the ballroom business in any other community aside from around Culver City and Los Angeles?

A. I was in the ballroom business in Hermosa Beach.

Q. Hermosa Beach?                      A. Yes, sir.

(Testimony of Joseph Zucca)

Q. Do you happen to know an operation which has come across my mind known as the Foreman Phillips?

A. I know of him.

Q. He operates on the Venice Beach and at the Plantation and also down at Compton. Have you kept in contact with his operation, the crowds he draws?

A. No, I haven't.

Q. You haven't followed that up? A. No, sir.

Q. And you do not know whether he uses name bands or not? A. No.

The Court: I did not hear that answer.

Mr. Doherty: He said he did not know.

The Witness: I don't know.

Mr. Doherty: Was that your answer? A. Yes.

The Court: Read the question to the witness.

The Reporter: He has now answered the question: "I [113] don't know."

Q. By Mr. Doherty: Some ballrooms cater to what is called "Westerns", don't they?

A. Yes, sir.

Q. And that is an entirely different type of band?

A. Yes, it is.

Q. And others cater to what is known as "Sweet Music," is that right?

A. Yes, that is right.

Q. From your experience in your operation down there—well, I will ask what type of music have you emphasized in Meadowbrook? A. Mostly swing.

Q. What? A. Mostly swing music.

Q. Mostly swing? A. Yes.

Q. If you should suddenly turn that over to sweet music, would you get the same crowd, from your observation? A. No; you would not.

(Testimony of Joseph Zucca)

Q. They would not come, would they? A. No.

Q. If you turned it over to Western type, you would get an entirely different crowd?

A. That is right. [114]

Q. And your operation would fail, wouldn't it?

A. That is right.

Q. So it not only means a band that can play music, but it must be a band that caters to the particular crowd that goes to that particular dance hall, doesn't it?

A. That is right.

Q. It might be a very well known band in one field and be a complete failure at your place of business?

A. That is right; that is very possible.

Mr. Doherty: Yes. That is all.

Mr. Jaffe: That is all.

Mr. Christensen: Mr. Birnie Cohen, please.

#### BIRNIE COHEN,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Birnie Cohen.

#### Direct Examination

By Mr. Christensen:

Q. Mr. Cohen, are you presently employed at any business, occupation or profession? A. No.

Q. Recently, however, you were, were you not?

A. Yes, sir.

Q. And that was what? [115]

A. Casino Gardens in Ocean Park.

(Testimony of Birnie Cohen)

The Court: Gentlemen, you will have to raise your voices. I have no difficulty whatever in hearing but I have to strain to hear your questions, Mr. Christensen, and naturally, the witness lowers his voice when you do yours.

Q. By Mr. Christensen: And what was your position there with the Casino Gardens in Ocean Park?

A. I was the owner, and later on, became the manager.

Q. When did you become the owner of the Casino Gardens in Ocean Park?

A. Around 1930.

Q. Did you operate that continuously until you sold it?

A. Yes, sir.

Q. When did you sell it, sir? A. In 1944.

Q. To whom did you sell it?

A. Tommy Dorsey.

Q. And thereafter you continued as manager, did you? A. Yes, sir.

Q. In addition to your 14 or so years of experience in the dance and ballroom business, did you have any other or prior experience? A. No; I did not.

Q. During the time that you were operating the ballroom, including both periods, you booked bands? [116]

A. Yes, sir.

Q. And presented dances or held dances, I think?

A. Yes, sir.

Q. Are you acquainted with the dance and ballroom business there? A. Fairly well.

Q. Are you also acquainted with a ballroom known as the Mission Beach ballroom in San Diego, sir?

A. Yes, sir.



(Testimony of Birnie Cohen)

Q. During what period of time have you been acquainted with it?

A. Last summer, I think, was the first time I have been down there.

Q. Have you an opinion as to the class of a ballroom that Mission Beach ballroom is, sir? A. Yes.

Mr. Doherty: I object on the ground it is not a basis for opinion evidence, incompetent, irrelevant and immaterial, and not an issue in the case.

The Court: Yes. The only predicate so far, or hypothesis, is his knoweldge of the Casino. That would not qualify him. He might make a comparison with his own institution which would not be a fair comparison. He has not shown any additional knowledge thus far.

Mr. Christensen: I see. [117]

Q. Are you acquainted with other ballrooms?

A. Yes.

Q. What other ballrooms do you know about?

A. Well, I know practically—I have seen all the ballrooms on the Pacific Coast, perhaps, and a lot of them throughout the United States.

Q. Now then, I repeat my question. Are you able to tell us what class of ballroom the Mission Beach ballroom down at San Diego is?

A. I would say it was a first-class ballroom.

Q. Do you know what is meant by the term "name band", sir? A. Yes.

Q. Will you please tell me? [118]

A. Any band that is popular among a group of people. that has had a lot publicity, through musical numbers they have played on the air or records they have made, or by the popularity of the leader; a band that would attract a large crowd.

(Testimony of Birnie Cohen)

Q. Have you an opinion upon the question of whether or not use of a name band is essential to the successful operation of a first-class ballroom?

Mr. Doherty: Object on the ground it is incompetent, irrelevant and immaterial, and not a matter upon which there can be expert testimony, and hearsay.

The Court: Read the question, please.

(The question was read.)

The Court: If he can qualify on that, he could answer it, but I don't believe he has yet qualified on that phase. He would just be giving his own view that would not be based on a hypothesis that would warrant him to express an opinion on it. Sustained.

Q. By Mr. Christensen: Well, is the Casino Gardens Ballroom at Ocean Park a first-class ballroom?

A. Yes, sir.

Q. Have you observed the operations?

A. Yes, sir.

Q. And the manner of operation of other first-class ballrooms here in California, let us say? [119]

A. Yes.

Q. Over a period of how long, sir?

A. Around fifteen years.

Q. That has been your sole occupation, has it, the ballroom and dance business during that period of time, sir?

A. That's right.

Q. Now, I will ask you if you have an opinion upon the question of whether or not the use of name bands is essential to the successful operation of a first-class ballroom.

Mr. Doherty: The same objection.

The Court: Overruled.

The Witness: A. In most cases it is.

(Testimony of Birnie Cohen)

Q. By Mr. Christensen: Well, can you explain your answer more clearly?

A. Well, some places operate strictly with name bands, and others have what they call B-bands, and they use—they have to have a name band every now and then to kind of pick it up and enlarge the crowds.

Q. Would it depend upon the type of competition which a ballroom has? A. Yes.

Q. Would it be true if the competitor was using stellar attractions in the way of bands that you, too, would have to do it in order to attract people?

A. Yes. [120]

Mr. Christensen: That is all. You may examine, sir.

Mr. Doherty: Is that all?

Mr. Christensen: Yes, sir.

#### Cross Examination

By Mr. Doherty:

Q. Mr. Cohen, the Casino Gardens is located, I believe, on Ocean Park Pier?

A. Right on the ocean front at Ocean Park.

Q. On the ocean front? A. Yes.

Q. And you say that in 1944 was purchased by Tommy Dorsey, the noted—

A. Orchestra leader.

Q. —orchestra leader. So far as band leader, is he a swing band leader? I don't know one from the other.

A. They claim he is a swing band leader.

Q. Now, you said that certain bands were known as name bands because of the publicity and popularity of the leader, and recordings, and things like that. Is this about correct, that certain bands that are very well known never play in ballrooms but are confined entirely to radio?

A. That's true.

(Testimony of Birnie Cohen)

Q. And then there is another type of band that maybe occasionally does hotel work, like at the Ambassador or the Waldorf in New York, and so forth, but play in pictures? [121]

A. That's right.

Q. Then there is another type of band that plays in theatres on the circuit like the Orpheum here?

A. Yes, sir.

Q. Then there is another type of band that plays or specializes in strictly dance music?

A. That's right.

Q. And that dance music may be of various types? And I submit, Mr. Cohen, I don't know how to dance, so don't laugh at me when I pull boners. I don't know how to dance. Some are known as symphonic bands, like our great symphony orchestra here?

A. Yes.

Q. Then others are what you call sweet music, like Lombardo?

A. That's right.

Q. Then there are others, what is known as the so-called swing bands?

A. Yes.

Q. Then others are extreme in that they are called the jump music, or the jive music, or hot music; is that correct?

A. That's right.

Q. Now, it depends upon the location as to what type of band should be brought into those places, does it not?

A. Yes. [122]

Q. In other words, if you had built up a trade like Mr. Zucca,—you were in the court room when he testified, weren't you?

A. Yes, sir.

Q. When you build up a trade of a particular type, you have a particular audience, and if you don't adhere to that type of music your audience would leave you, wouldn't they?

A. That's right.

(Testimony of Birnie Cohen)

Q. Merely because it is a name band doesn't mean anything unless it is the type of name band you want?

A. That's right.

Q. And these name bands originate by showmanship, mostly, of the leader, do they not?

A. Mostly, yes, sir.

Q. In other words, he is a colorful fellow, he advertises, and he does things that attract attention; is that correct?

A. That is correct.

Q. Sometimes he has what is known as a good arranger; in other words, a man who can take a standard piece of music and rewrite it so that it will sound catchy and attractive?

A. That's right.

Q. And sometimes he makes a record of that, and it takes, and people like it, and he gets a name in a brief time?

A. That's right. [123]

Q. And sometimes their names go down almost as fast as they come up,—

A. Mostly.

Q. Isn't that right?

A. Yes, sir.

Q. In other words, what may be a name band, so-called, in 1945 might be one of those that also ran in 1946?

A. That's right.

Q. In other words, he may move to a place and have an engagement, and you pay him five, six, seven, eight, nine, ten thousand dollars for a week, and he wouldn't draw any crowds, and then he hits another place and it happens again, then his popularity just goes out, doesn't it?

A. It goes down, yes, sir.

Q. And the dance hall people don't want him any more?

A. That's right.

Q. You have had name bands down at Casino Gardens that lost you money, haven't you?

A. Yes, sir.

(Testimony of Birnie Cohen)

Q. Good name bands, so-called big name bands?

A. Yes, sir.

Q. Is that right? A. Yes.

Q. I mean names that stood at that particular time up near the top of drawing, as a drawing attraction?

[124]

A. Yes, sir.

Q. So there are many elements that go into operating a dance hall? A. Yes, sir.

Q. Good management, good publicity, a fine public relations, knowing how to appeal to a particular crowd and hold that crowd, and economical operation, and many other things go into it, don't they? A. Yes, sir.

Q. So that you can't say just one thing makes a success of a dance hall? Many things go into making it a success? A. Many things go into it.

Q. Is that right? A. Yes, sir.

Q. You get your attractions, some, from the Music Corporation of America, or did down at Casino Gardens?

A. Yes, sir.

Q. You got some from the General Amusement Corporation? A. Yes, sir.

Q. You got some from the William Morris Agency?

A. Yes, sir.

Q. And some from the Fredericks Brothers Agency?

A. Yes, sir.

Q. By the way, I believe in the first part of your testimony I didn't catch the first word or two. I think you [125] said Mr. Finley had been with you down at Casino Gardens?

A. That question wasn't asked me.



(Testimony of Birnie Cohen)

Q. I thought you were asked whether or not you knew Mr. Finley, and if that wasn't asked, I misunderstood. He was at one time down at Casino Gardens?

A. Yes, sir.

Q. Is he still there? A. No, sir.

Q. He has no connection out there now?

A. No, sir.

Q. During your ownership of Casino Gardens did you always run it on the policy of so-called highly advertised, big name bands? A. No, sir.

Q. What type of band did you use?

A. Well, I used local bands and bands that would qualify as B-bands, as they call them, in the business.

Q. In other words, that was sort of an arbitrary proposition between the price paid Tommy Dorsey and Jimmy Dorsey, and the bands that you took?

A. Yes, sir.

Q. In other words, much lower in price?

A. Yes, sir.

Q. And was it a successful operation?

A. Yes, sir. [126]

Q. Now, you have, or while you were down there at Casino Gardens you had, of course, Tommy Dorsey and his brother Jimmy? A. And Jimmy.

Q. And they were very popular? A. Yes, sir.

Q. And that was a different type operation?

A. Yes, sir.

Q. Do you know a band named Dick Allen?

A. Yes, I do.

Q. Is that a name band? A. No.

Q. You don't know whether it was or not?

Mr. Christensen: He answered "No."

(Testimony of Birnie Cohen)

Q. By Mr. Doherty: It was.

A. It wasn't a name band.

Q. It was not. Spade Cooley is a name band, isn't it?

A. He is a name band in his category, yes.

Mr. Doherty: I think that is all.

Re-Direct Examination

By Mr. Christensen:

Q. Mr. Cohen, at the time that Mr. Finley was at Casino Gardens, he was the manager, wasn't he?

A. He had a contract that way, yes.

Q. As a manager? [127] A. Yes.

Q. Did the Casino Gardens lose any money under Mr. Finley's management? A. No.

Q. It made money, did it? A. Yes, sir.

Q. And just before he came in there, it lost money, didn't it, for a period of time?

A. I operated it myself.

Q. I mean during the early part of, let us say, 1944, Casino Gardens lost money, didn't it?

A. I don't know—in the early part of 1944, I had the place myself.

Q. Well, I mean just previously to the time Mr. Finley took over at Casino Gardens? A. Yes.

Q. It lost money, didn't it? A. Yes.

Q. And in the year before that it lost money, didn't it?

A. Well, I am not qualified to say at that time, because I really didn't know. Mr. Dorsey was operating it, and I don't know just actually what happened there at all.

Q. But after Mr. Finley came in it made money?

A. Yes, sir. [128]

Q. To a point that he was able to sell out very profitably? A. That's right.

Mr. Christensen: Thank you. That is all.

(Testimony of Birnie Cohen)

Re-Cross Examination

By Mr. Doherty:

Q. With Mr. Finley's entrance into Casino Gardens, also at the same time the Dorsey brothers came in, that is, as the operators or owners?

A. Dorseys were in there about a year or so before Mr. Finley came in .

Q. Did you observe Mr. Finley's operation there as manager?

A. Yes, sir.

Q. You had opportunity to observe the type of operation that he gave to the place?

A. Yes, sir.

Q. You have had experience in observing managers of ballrooms, have you?

A. Yes, sir.

Q. Would you consider Mr. Finley a good operator of a ballroom, an experienced, capable, efficient operator?

A. Yes, Mr. Finley was a good promoter, promotionally.

Q. In other words, there is a difference between promotion and management, is there not? [129]

A. Yes, sir.

Q. I am asking you if he was a good manager of a ballroom.

A. Yes, sir.

Q. Also a good promoter?

A. Yes, sir.

Q. You found him to be a man who knew the business thoroughly? I am speaking now of the operation end of it, not the promoting end.

A. I didn't get the question.

Q. Do you consider Mr. Finley an experienced, capable, competent operator from the standpoint of management, not from the standpoint of promotion?

A. Yes, sir.

Q. How is that?

A. Yes, sir.

(Testimony of Birnie Cohen)

Q. He sold his interest to the Dorsey brothers, did he not? A. Yes, sir.

Q. And when he left, you left? A. Yes, sir.

Mr. Doherty: And neither one of you have any connection there now. That is all. [130]

Re-Direct Examination

By Mr. Christensen:

Q. I forgot to ask you, while Mr. Finley was there at the Casino Gardens you played both sweet and swing music, didn't you? A. Yes, we did.

Q. And you used M. C. A. bands there, Music Corporation of America bands?

A. We used General Amusement and M. C. A. bands?

Q. Could it have been operated without M. C. A. bands? A. Not very well.

Q. Not profitably, at any rate; is that right?

A. I wouldn't say that. Tommy Dorsey was an M. C. A. band, and Jimmy Dorsey, his brother, was a General Amusement band.

Q. Now, then, you spoke about the management being or the duties of one operating a ballroom as being in two parts, one, managerial and the other promotional. You divided it. The promotional is those activities which bring people to the ballroom; is that right? A. Yes.

Q. An in that you say Mr. Finley was exceedingly good? A. Yes.

Mr. Christensen: All right. Thank you.

Mr. Doherty. That is all. [131]

The Court: We will take a recess for a few minutes, ladies and gentlemen. Remember the admonition which I gave, and keep its terms inviolate. Occupy the jury rooms, please.

(A short recess was taken.)

The Court: All present. Proceed.

Mr. Doherty: I want to recall Mr. Cohen, Mr. Birnie Cohen. I would like to ask him, with your permission, your Honor, a couple more questions which I overlooked.

The Court: Apparently I didn't take the recess at the opportune time. I tried to, but apparently I didn't. Proceed.

BIRNIE COHEN,

recalled as a witness by and on behalf of the plaintiff, having been previously duly sworn, was examined and testified further as follows:

Re-Cross Examination

By Mr. Doherty:

Q. Mr. Cohen, in your direct examination you spoke about Mr. Finley selling out at a profit. You don't know what he received, do you, as compared with what he put into the enterprise?

A. I know what he received, but I am not really positive of what he put in, although I have been told.

Q. In other words, you have no personal knowledge of that? [132]

A. No, sir.

Q. Now, during Mr. Finley's operation at Casino Gardens he introduced liquor into that establishment for the first time, did he not?

A. Yes, sir.

Q. There was no liquor there until Mr. Finley came there?

A. That's right.

Q. Now, do you know Mr. Joe Ross of Judge Pacht's firm?

A. Yes, sir.

Q. Did you have a conversation with him out at the Hillcrest Country Club a week ago Saturday, January 19th?

(Testimony of Birnie Cohen)

A. I played golf with him out there that day.

Q. You played golf in a foursome that day?

A. Yes, sir.

Q. Did you not at that time have a conversation with Joe Ross in which you said, in substance and effect, that you would like to testify in this case and state that Mr. Finley was not a good operator, that he was a phony?

A. I don't remember that conversation.

Q. You don't remember that conversation?

A. No.

Q. Do you remember discussing Mr. Finley with Mr. Joe Ross on that occasion?

A. No, I don't. [133]

Q. Do you remember stating that you were glad that Mr. Finley was out of the Casino Gardens?

A. I may have said it, but—I made that remark.

Q. Also, on that occasion that he was never around the Casino Gardens?

A. I think I said that. I don't know.

Q. Now, you also know Mr. Lawrence Barnet, one of the defendants in this case?

A. Yes, sir.

Q. And you had a conversation with him recently, on last Friday, at his office?

A. I was in his office last Friday, yes.

Q. You went to his office?

A. Yes.

Q. You went there of your own volition?

A. Yes, sir.

Q. He didn't ask you to come, did he?

A. No, sir.

Q. Do you remember on that occasion in Mr. Barnet's office that you said to him that you wanted to be a witness



(Testimony of Birnie Cohen)

in this case so that you would be able to testify that Mr. Finley was a phony?

A. No, I don't remember saying that.

Q. Did you discuss Mr. Finley in that conversation?

A. I don't know whether I did or not. [134]

Q. You didn't say that, in substance or effect?

A. I don't remember it.

Q. Did you have any conversation with Mr. Ames Bishop and Mr. Hal Howard at the M. C. A. office last Friday?

A. I was over there, yes, sir.

Q. Of your own volition?

A. Yes, sir.

Q. And you talked with those two gentlemen?

A. Yes, sir.

Q. Did you not say, in substance and effect, on that occasion, that Mr. Finley was a two-bit operator?

A. No, I don't remember making that remark.

Q. What did you say?

A. I don't remember making any remark like that.

Q. You never discussed Mr. Finley with Mr. Bishop or Mr. Hal Howard on last Friday?

A. We talked about the operation out at the ballroom, yes, sir.

Q. And you told them, did you, that it was a first-class operation under Mr. Finley?

A. I don't remember ever saying that, either.

Q. And you do not remember saying that Mr. Finley was a phony?

A. No, I don't.

Q. Or that he was a two-bit operator? [135]

A. No, sir.

Q. But you did say that you were glad he was out of there?

A. Yes, sir.

Mr. Doherty: That is all.

(Testimony of Birnie Cohen)

Re-Direct Examination

By Mr. Christensen:

Q. Why were you glad he was out?

A. Well, he wasn't — the operation wasn't — there wasn't the feeling there. There was always a little strife around in the organization during the time Mr. Finley was there.

Q. He was energetic and driving, wasn't he?

A. I don't know how you mean that.

Q. He was continually wanting things done, wasn't he?

A. There was a little upheaval out there all the time. The thing wasn't operating smoothly at that time.

Q. Because he was trying to promote it all the time, wasn't that it?

A. Well, there was discussion with Mr. Dorsey and Mr. Finley. They didn't seem to be getting along very well.

Q. Oh, it was a personal matter between Mr. Dorsey and Mr. Finley?

A. I think it was a personal matter.

Mr. Christensen: I see. Thank you. [136]

Re-Cross Examination

By Mr. Doherty:

Q. Mr. Dorsey wanted Mr. Finley out of there, didn't he, and said so?

A. He made that remark, yes.

Mr. Doherty: That is all.

(Testimony of Birnie Cohen)

Re-Direct Examination

By Mr. Christensen :

Q. You know that Mr. Dorsey has already signed a contract to play for Mr. Finley this coming spring, don't you, at Mission Beach?

A. I understood there is a contract.

Q. And that that was entered into since that time?

A. **Yes.**

Mr. Christensen: That is all.

The Court: Which Mr. Dorsey is that?

The Witness: I think it is Tommy and Jimmy Dorsey.

Mr. Christensen: That is all. Thank you.

(Witness excused.)

The Court: Call your next witness, gentlemen.

Mr. Christensen: Mr. Ralph Wonders. I was giving counsel an opportunity there.

The Court: No, just move right along. [137]

RALPH WONDERS,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please?

The Witness: Ralph Wonders, W-o-n-d-e-r-s.

By Mr. Christensen:

Q. Mr. Wonders, let's you and I both try to keep our voices up as we talk. A. I will be glad to.

Q. By whom are you employed, Mr. Wonders?

A. General Amusement Corporation.

(Testimony of Ralph Wonders)

Q. What is the business, or occupation, or profession of the General Amusement Corporation, sir?

A. Well, we book bands, book radio shows into the different networks, and shows and bands into spots.

Q. When you say "networks," I assume you mean radio networks; is that correct? A. Yes.

Q. And where else?

A. Cocktail units, cocktail lounges; acts into theatres, and bands into theatres. General Amusement is just what it implies. We are in the general amusement business. We supply amusement for most anything.

Q. Ballrooms, too? [138] A. Yes, sir.

Q. And your capacity or position there with the General Amusement Corporation is what, sir?

A. I have the title of vice-president and manager of the West Coast office.

Q. And that office is located here in Los Angeles?

A. At 9028 Sunset Boulevard.

Q. What are your duties as vice-president and general manager of the General Amusement Corporation, sir?

A. Well, I look after the general things around the office. I book bands. I do general booking also, as far as spots, radio shows, pictures, are concerned.

Q. How long have you been with General Amusement Corporation here on the coast?

A. Seven and a half years.

Q. And prior to that time, to the seven and a half years?

A. I was in New York with the General Amusement Corporation for two years.

Q. And your duties there were what, sir?

A. Practically the same as they were here, or are here.

(Testimony of Ralph Wonders)

Q. Then let's go back of nine and a half years ago, and what was it before, sir?

A. I was with the Columbia Broadcasting System.

Q. What were your duties there? [139]

A. Manager of the Columbia Artists Bureau.

Q. What does that mean?

A. The Artists Bureau was run as a subsidiary of the Columbia Broadcasting System. We managed and signed up acts and bands, and put lines into hotels. In other words, it was practically the same as the General Amusement Corporation, only it was connected with the Columbia Broadcasting System.

Q. How long have you been in the business, let us put it, of booking bands?

A. Approximately thirty years.

Q. That has been your full-time occupation during that period of time, sir?

A. With the exception of the war, the First World War.

Q. Could you explain to us the procedure in booking bands into a ballroom?

A. Well, we have bands that are playing the New York territory or the Chicago territory, and we go to a place like the Palladium and solicit their business, and try to get a four or six weeks booking to bring them into our territory, and then we sell them on from the Palladium, and route them up and down the coast, possibly at Mission Beach or at Casino Gardens, and one nighters up through Sacramento and up through that territory.

Q. How are those arrangements made? Is it by personal contact or otherwise? [140]

A. Personal contact, by telephone and telegraph.

Q. By mail? A. By mail sometimes.

(Testimony of Ralph Wonders)

Q. Let us take, for example, if the band were in New York and it wishes to come here. What is your first step?

A. Try to secure a booking, what we call a spot booking to guarantee so many weeks in one spot, to bring it into the territory.

Q. And your territory would comprise what?

A. From the Rocky Mountains west.

Q. Then to take our hypothetical case, would you start to book them as they come east as soon as they come within your territory?

A. You mean as they come west?

Q. I beg pardon. As they come west?

A. Yes, we pick them up at our territory line, which would be Salt Lake City, if they came in that way.

Q. And then you would contact a ballroom operator en route? A. Yes.

Q. Or perhaps I should have said ballroom operators en route? A. Yes, sir.

Q. Do you prepare contracts?

A. Yes, sir. [141]

Q. Do you send them to wherever the band is?

A. Yes, or we sometimes hold them until they come into the territory. If we know where to reach them, we send them out and have them sign it.

Q. And you send them to the ballroom operators?

A. They sign them also.

Q. Help us a little bit in this. Mr. Doherty and I certainly should not be trying this case. We don't know very much about bands or music, so again I ask you to bear with me if I appear to ask a question which is ele-



(Testimony of Ralph Wonders)

mental to you. But when you know that a band is coming west, who then fixes the itinerary of the band?

A. Well, that is done in different ways. Certain leaders will, if they have confidence in you, and some of them that haven't been on the coast before, will let us go ahead and arrange the tour. Of course, everything is submitted to the band leader, or his manager, and they let us sometimes route it to the best of our ability, and we submit it to them, and they O.K. it.

Q. Generally speaking, I take it a band has a manager, in addition to a leader? Is that a correct statement or not, sir?

A. Yes, sir.

Q. Now, who arranges transportation for these bands?

A. Well, the band manager or band leader, or whoever [142] travels with the band, generally arranges for the transportation.

Q. Does a booker do that at times?

A. Sometimes, when we can help out, with bands coming into the territory, where we have—where the manager hasn't arranged it, they wire us to take care of certain transportation sometimes.

Q. This might be a good time for you to tell us this: In addition to there being a leader, you told us there is a manager normally connected with a band as a part of their organization. What other personnel is there besides those who actually play instruments?

A. Well, sometimes there is a publicity man, a band manager or a road manager, and sometimes a so-called band boy.

Q. What does a band boy do, sir?

A. He sees that the baggage gets on the train, gets off, sees to the instruments, sees that the instruments

(Testimony of Ralph Wonders)

and stands are set up, and the music is properly packed, and is general errand boy, if you want to call him that.

Q. Mr. Doherty mentioned an arranger. Tell me what that is.

A. Some bands have arrangers in their bands. Some bands have arrangers that stay in one spot, like New York or Chicago, and some arrangers come on with the bands.

Q. Is it characteristic, or is one of the characteristics [143] of a band its method of arrangement of the pieces which it plays?

A. Well, arrangements are a very important part of an organization.

Q. Would you explain there? I don't know enough to ask you the question, but explain what you mean by this "arranger," and what its value and effect is.

A. Well, I will go on record that I am not a musician. I know nothing about music. But an arranger will take a certain number, or the arrangers take a certain number and make a certain arrangement out of it which seems to be more appealing to the public than originally written. Sometimes they over-arrange. Sometimes, and particularly in your records, your commercial records, an arrangement of a tune is very important.

Q. Do the bands carry their own arrangements with them, except in those cases where you have told us they did not, sir?

A. Arranger or arrangements, now?

Q. Let me ask you about arrangements, first.

A. Arrangements they carry with them. That is the music they use and play on their jobs. [144]

Q. And you say that this was very important to the band? A. Very important.

(Testimony of Ralph Wonders)

Q. The band also has certain paraphernalia which it carries with it, doesn't it? A. Yes, sir.

Q. Scenery, maybe? A. Well—

Q. Tell me what they have.

A. Not scenery particularly. They carry their clothes, of course, their wardrobe trunks, their instruments, their band stand that they put their arrangements on in front of them, with their names on it, and many other incidentals as a band of 18 men would have to carry.

Q. Are those things, too, characteristic of a particular band, sir?

A. Of all the top name bands.

Q. Is it important, then, to the band?

A. Yes, sir.

Q. And, as a part of your duties in booking bands, do you have occasion—or that is not the way to say it—do you go and visit ballrooms? A. I do.

Q. What is your purpose in doing that?

A. Well, we are always looking for new material to [145] sign up to our agency; and I am well acquainted with a lot of the band leaders. I go for a personal call to see them, or we go for a booking.

Q. You say you go to see the band leaders. When they are on tour in your territory, of course, do you contact them? A. Yes, sir.

Q. By that, I mean when necessary, by mail or telephone or telegraph?

A. Either way; personally, probably, sometimes.

Q. In so doing is it necessary and do you cross state lines? A. Yes.

Q. Are you familiar with the Mission Beach ballroom? A. Yes, sir.

Q. You have been there? A. Yes, sir.

(Testimony of Ralph Wonders)

Q. Are you acquainted with Mr. Finley?

A. I know Mr. Finley.

Q. For how long have you known Mr. Finley?

A. About a year and a half.

Q. Have you had experience with Mr. Finley in the booking of bands?

A. Yes, sir.

Q. Tell us briefly your experience with him in booking [146] bands, sir.

Mr. Doherty: It is incompetent and immaterial to any issue of the case, including the witness.

The Court: Overruled. You may answer.

The Witness: Will you repeat the question?

The Court: Yes; we will have the reporter read the question.

(Question read by the reporter.)

A. Well, in booking with Mr. Finley, there is not much. He knows what bands, as a rule, he would like to have, if you can get them for him. Once you can sell him on the idea the band is good for him, it doesn't take very long to make a deal. He makes good, snappy judgments. My dealings with Mr. Finley have been very fine all the way through.

Q. By Mr. Christensen: Have you had occasion to observe his manner of operation of the Mission Beach since he has had it?

A. Yes.

Q. Have you also had occasion to observe his manner of operation of the Casino Gardens at Ocean Park during the time he was there?

A. Yes, sir.

Q. Have you also had occasion to observe his management and operation of the Trianon ballroom at San Diego?

A. Yes, sir. [147]

(Testimony of Ralph Wonders)

Q. Have you an opinion as to his ability as a manager of such ballrooms?

A. As to the Trianon and Casino Gardens and the Mission Beach I found them to be a very well run ballroom.

Q. When you first dealt with Mr. Finley it was with reference to booking of bands, wasn't it?

A. (Witness nodding.)

Q. Before you would book a band into a ballroom would you make any investigation of the operation of the ballroom.

A. We would if it was a new client.

Q. Well, Mr. Finley was a new client to you about a year and a half ago, I believe you said?

A. That is right.

Q. Well, did you do that with him?                      A. I did.

Q. After you did that, you agreed to do business with him?

A. Yes. Even I went further than that. I even made him pay a deposit, in fact, for two weeks' salary of the first band I put with him—

Q. And thereafter—                      A. —in advance.

Q. Thereafter, what did you do?

A. Strictly a business deal; every band was paid on time. [148]

Q. Then, to put it in a nutshell, he met all the requirements of your office?                      A. Yes, sir.

Q. It has been mentioned here this morning that there are two functions in the operation of a ballroom operator: one, strictly managerial of the place, and the other, promotional; is that true, sir?

A. A very important part.

(Testimony of Ralph Wonders)

Q. A moment ago I asked you concerning your opinion of him and you said, "finest." Now, would that be true both with reference to the managerial and promotional, or just one of them? A. No; to both.

Q. I see. In your opinion, how important is it to the successful operation of a ballroom that the operator have promotional ability? A. Very important.

Q. Could you illustrate to us?

A. Well, you could put many names into a room and if you don't tell somebody they are there, I don't know how they would go in to see them; and promotion is a very important thing in running a ballroom, the same as a theatre. There is the proper advertising in advance, the proper promotion in advance to instruct your public that on a certain date you will have a certain name or a certain attraction. [149]

Q. When and where did you first—you told me about a year and a half ago you first met Mr. Finley—but can you more definitely fix the date and the place and the occasion?

A. Well, I went to San Diego. I found out that Mr. Finley was bidding on Mission Beach and I knew that he was at that time operating the Trianon; so Mr. Webster, who works with me and books one-nighters, made a trip to San Diego to the Trianon ballroom to see Mr. Finley. So that is where I first met Mr. Finley, in the Trianon ballroom.

Q. At that time—and you can only, I believe, answer this question yes or no—did you have some conversation with Mr. Finley concerning the question of whether or not you would assist him in furnishing bands if he was the successful bidder?

A. I did have that conversation? Yes,



(Testimony of Ralph Wonders)

Q. Oh, by the way, did you know Mr. Daillard?

A. Yes, sir.

Q. Wayne Daillard? A. Yes, sir.

Q. How long have you known him, sir?

A. I have known Mr. Daillard 15 years or better.

Q. Have you ever talked with Mr. Daillard concerning his arrangement or agreement with Music Corporation of America relative to the furnishing of name bands to him? A. Yes. [150]

Q. When did that occur, sir?

A. On many occasions.

Q. Could you help us by more definitely fixing one occasion, sir?

A. Well, I have been down to the Pacific Square ballroom, talking bands to Mr. Daillard there. I have talked with him in the City of Los Angeles. I have talked with him in my own home. I have talked with him in his office, upstairs above the Pacific ballroom.

Q. Was any other person present on any of these occasions besides you and Mr. Daillard?

A. I think Mr. Webster was with me at one time, too.

Q. At or about the time that the bids were let and Mr. Finley acquired the lease on Mission Beach Amusement Center did you talk with Mr. Daillard?

A. At the time the bids were let?

Q. At or about the time, sir?

A. I talked with Mr. Daillard shortly before or right after the bid was made—right after it was made.

Q. Where was that conversation, sir?

A. We had lunch at the Players Club?

Q. Can you more definitely fix the date, sir, than shortly after? Is that the best you can do?

A. I think it was in November.

(Testimony of Ralph Wonders)

Q. Of the year 1944, sir? [151]

A. Yes.

Q. You say you had lunch with him at the Players Club. The Players, that is an eating place out on the strip, is that right?

A. Out on the strip.

Q. How was that luncheon engagement arranged, sir?

A. Well, I talked with Mr. Daillard a day before, and he called me when he came into town and said he would like to have lunch with me, and I agreed to go with him and we went to the players.

Q. Anyone else present at that occasion, sir?

A. Jack Flynn of the Morris office.

Q. Was there a discussion at that time pertaining to the operation of Mission Beach ballroom or of bands for the San Diego area?

A. Well, the discussion was mostly about bands for the Pacific Square.

Q. All right. Will you tell us what the conversation was, sir?

Mr. Doherty: That is subject, your Honor, to our objection it is hearsay, incompetent and immaterial, no foundation laid, and on his promise that if it is not connected up, a motion to strike will lie by the defendants.

The Court: The objection is overruled, with the same reservation that heretofore has been made with respect to [152] similar objections and similar rulings. We will have it read now.

(Question read by the reporter.)

A. Mr. Daillard wanted to know whether or not we would continue doing business with him, and what he would like to have would have been us to give him a first refusal on all bands we had coming into the territory.

(Testimony of Ralph Wonders)

Q. By Mr. Christensen: Tell us all of the conversation?

A. Well, that was the general gist of it. The rest was some of a personal nature.

Q. What reply, if any, did you make to him?

A. I didn't agree to it.

Q. That you did not agree to it might possibly be your conclusion; if you can, tell us what you said to him.

A. Well, I told him frankly that the situation in San Diego was so that I welcomed some other competitor down there, because it would give us a chance to get our bands into other places; that I sell bands to anybody; that we were in the general band business.

Q. Hadn't you been able to book any bands into Pacific Square theretofore?

A. Yes; we booked some of our name bands into the Pacific Square.

Q. Then, what did you have in mind there? What was your statement there, then? [153]

A. Well, my statement was that that was what Mr. Daillard wished us to give him, the first refusal of any bands before we offered it to a competitor.

Q. Mr. Daillard had theretofore told you that he had an agreement with M. C. A. ?

A. Well, I knew about the agreement with M. C. A.

Q. You talked with representatives of M. C. A. concerning it, too, did you? A. Yes, sir.

Q. After that contract went into effect were you able to book any bands into Pacific Square?

A. Some; our top name bands.

Q. How did you do that?

A. Well, I always would go direct to Mr. Daillard.

(Testimony of Ralph Wonders)

Q. What would happen when you would go to Mr. Daillard and tell him you had a band? Then what?

A. Well, he would either—if it played the Palladium and was a top name band, Mr. Daillard was always interested in playing them into Pacific Square.

Q. Did you make a contract with him then?

A. I would go direct to Mr. Daillard and I always sent my contracts of the bookings with us direct to Mr. Daillard.

Q. You mean previous to the time of the contract with Mr. Daillard and the Music Corporation?

A. No; during and before that; before that and still [154] after that.

Q. Did Mr. Daillard make the bookings right with you? A. Yes.

Q. On all occasions?

A. Not on all occasions; no, sir.

Q. What was the general practice?

A. Well, I would even call Mr. Daillard and practically make that deal, and five minutes, fifteen or a half hour later, Mr. Bishop from the M. C. A. would call me and would ask me why I called Daillard direct. I told him that was the way I was doing business.

Q. What else did he say?

A. Well, he knows that he is booking the place; why don't I call him.

Q. Would you have to split commissions with anybody on that?

Mr. Doherty: That would call for his conclusion. He may relate the conversation.

The Court: Yes.

(Testimony of Ralph Wonders)

Q. By Mr. Christensen: Tell us what was said concerning that.

A. Well, they always asked us to split commissions on bands. We didn't do it on many occasions; only on one or two occasions.

Q. You mean bands that were booked right into the [155] Pacific Square? A. Yes, sir.

The Court: Will you read that answer, please, Mr. Reporter?

(Previous answer read by the reporter.)

The Court: You are referring to the Pacific Square when you use the term "they"?

The Witness: I was referring to both, both Pacific Square and Mission Beach, because, if the question—if I know it rightly, was if Mr. Daillard had, and I was speaking frankly, because Mr. Daillard had both at one time, Mission Beach and Pacific Square.

The Court: You are referring to Daillard in that answer?

The Witness: Yes, sir.

Q. By Mr. Christensen: Did you have a conversation with the defendant Bishop about ten days before Mr. Finley got the lease on Mission Beach?

A. Yes.

Q. Was that a personal invitation or was it by way of telephone?

A. By way of telephone.

Q. Did he call you or did you call him, sir?

A. He called me.

Q. At your office? A. Yes, sir. [156]

Q. You know Mr. Bishop, don't you?

A. Yes, sir.

(Testimony of Ralph Wonders)

Q. How long have you known him?

A. Well, ever since I have been on the Coast; about seven years.

Q. What did he say and what did you say on the occasion of that conversation?

A. Mr. Bishop called me on the phone in my office and asked me if I would come down to San Diego for Mr. Daillard, to appear before the City Council; that the bid was up for Mission Beach and he would like to have me come down.

Q. Did he tell you what he wanted you to say or do, if anything?

A. Well, he wanted me to bring a list of my bands down and present that list of bands to the City Council.

Q. And what else, if anything?

A. Well, that was the gist of the conversation on the telephone. I refused to go.

Q. And what, if anything, did Mr. Bishop say in reply to that?

A. Well, he told me—it was general conversation—he told me that I was very friendly with Daillard and that I should do that for Daillard; and I admitted I was very freindly with Mr. Daillard, but I didn't think it was very good business for me to go down to San Diego and appear for [157] anybody.

Q. Did he tell you what, if anything, he wanted you to tell the City Council?

A. No, he didn't. He asked me to bring a list of my bands.

Q. Did he want you to testify for Mr. Daillard or for Mr. Finley?



(Testimony of Ralph Wonders)

Mr. Doherty: The question calls for his conclusion, without the conversation.

The Court: That is right. State what he said.

Q. By Mr. Christensen: What did he say? Did he say anything about that?

A. He wanted me to testify for Mr. Daillard.

Mr. Christensen: Would this be a good time to take a recess, your Honor?

The Court: I think it would, yes.

Ladies and gentlemen, we will take a recess until 2 o'clock this afternoon. Remember the admonition and keep its terms inviolate. Be here at 2 o'clock, please.

(Whereupon, a recess was had until 2:00 o'clock p. m. of the same day.) [158]

Los Angeles, California; Wednesday, January 30, 1946.  
2 P. M.

The Court: All present. Proceed.

RALPH WONDERS,

called as a witness by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Christensen:

Q. Mr. Wonders, my associates have invited my attention to the fact that I didn't ask you if that was all of the conversation that was had upon the occasion when you were having luncheon at "The Players" with Mr.

(Testimony of Ralph Wonders)

Daillard and Mr. Flynn. Did Mr. Flynn say anything there?

A. Yes, Mr. Flynn said he was under the impression that all the agencies were splitting commissions at Mission Beach, and he had found out that wasn't so, and he was very much put out about it.

Q. What did Mr. Daillard say about that?

A. Mr. Daillard said from now on we could go direct to him, and there would be no more split commissions.

Q. Did it work out that way?

A. Not exactly. Mr. Bishop still called.

Q. I beg pardon?

A. Mr. Bishop still called about bands. [159]

Q. Do you mean after you had talked to Mr. Daillard about booking a band?

A. In regard to split?

Q. Yes. A. We didn't split any more.

Q. I mean, you say Mr. Bishop continued to call or kept on calling.

A. To find out what we had available.

Q. And there were occasions, were there not, when you would tell Mr. Daillard you had a band available? Did that happen?

A. In what year are you talking about?

Q. In the year, 1945, sir.

A. No, we didn't have. We had some bands available, but we sold nothing in Pacific Square.

Q. I see. Now, during the year of 1945 the General Amusement Corporation had how many name bands available to operators in the San Diego area, sir?

A. We had Jimmy Dorsey, Frankie Carle, Tony Pastor, Glenn Gray, and I believe one other band. Five in total.

(Testimony of Ralph Wonders)

Q. Was that Stan Kenton?

A. Stan Kenton, you are right.

Q. Five, then, you say you had? A. Yes, sir.

Q. During the entire year 1945? [160]

A. Yes, sir.

Q. Did you book Stan Kenton in either the Pacific Square or the Mission Beach Ballroom?

A. The Mission Beach Ballroom.

Q. You did. The five name bands that you have mentioned, were they all booked in Mission Beach Ballroom during the year 1945, sir? A. Yes, sir.

Q. Do you know how many name bands were available on the Pacific Coast by all other booking agencies except the Music Corporation of America during the year 1945 and available for booking in the San Diego area?

A. Well, I can only answer that question in this way. I know of Vaughn Monroe, Henry Busse, and another band which they wouldn't use, which was a colored attraction, Duke Ellington.

Q. So that there were, except for Music Corporation of America bands, there were only eight available for booking in the San Diego area during the year 1945?

A. Outside of Music Corporation?

Q. Yes, sir.

A. So far as I know. I don't know what Fredericks Brothers had.

Q. Now, in the band booking business, is there what is known as the Big Three? [161]

A. Sometimes it is called that.

Q. What are they?

A. Music Corporation, William Morris, and General Amusement Corporation.

(Testimony of Ralph Wonders)

The Court: Will you read the answer?

(The answer was read.)

The Court: Gentlemen, I wish you would approach the bench.

(Discussion between court and counsel off the record.)

[162]

Q. By Mr. Christensen: Does General Amusement Corporation have—or, better stated, did it have during the year 1945 enough name bands available to ballroom operators in the San Diego area to properly service a first-class ballroom? A. Exclusively?

Q. Yes, sir. A. No, sir.

Q. When was your first name band available in the year 1945 to operators in the San Diego area, sir?

A. I couldn't answer that question without checking our records.

Q. Do you recall, or did you have anything to do with a booking of Henry Busse in Mission Beach ballroom, sir?

A. I had nothing to with the booking of it. I was up in San Francisco and Mr. Busse was playing the Palace Hotel, and I knew that Mr. Finley was having trouble getting a band for the opening, so I talked to Mr. Busse at that time about going down there for the opening.

Q. Henry Busse is not one of your bands, is he, sir?

A. No, sir.

Q. In your opinion, sir, is the Missoin Beach ballroom a ballroom which is comparable to the Pacific Square ballroom in the San Diego area?

A. Yes, sir. [163]

(Testimony of Ralph Wonders)

Q. Are you familiar with the manner in which Mr. Finley has operated the Mission Beach ballroom?

A. Fairly so; yes, sir.

Q. And what is your opinion of that, sir?

A. I think it was operated on a very nice scale.

Q. You are acquainted, are you not, sir, with the Trianon ballroom in San Diego?

A. Yes, sir.

Q. Will you describe it to us?

A. The structure of the ballroom or—

Q. It has been characterized here as a second-floor ballroom.

A. The ballroom is on the second floor, but being on the second floor does not necessarily make a bad ballroom. The ballroom on the second floor is a very fine ballroom, very well equipped; and during the time that I was there, it was always kept very clean. I don't know the class of people that went in there. I have never been in there recently at night time, but the ballroom itself is a very nice place.

Q. Would you consider it a large-scale operation as a ballroom?

A. Well, not on the same scale as the Palladium or one of those class places; no, sir.

Q. The Palladium, of course, I think we consider one [164] of the better?

A. That is right.

Q. Or one of the best, is that right?

A. One of the tops; the top.

Q. Would the Trianon be the next scale lower than that, or would it be farther down?

A. I don't know how to scale it. It is a very fine place, a nice ballroom.

(Testimony of Ralph Wonders)

Q. And the capacity there, do you know?

A. Well, the capacity at the Trianon is not as great as the Mission Beach or Pacific Square. It is a smaller ballroom.

Q. Mr. Wonders, we have been using the name or the term "name band." Will you define it for us, sir?

A. Well, my idea of a name band is a band or an organization that is nationally known through records, commercial records, transcriptions. They play one-nighters, do radio broadcasts, either commercially or sustaining, plays the top spots of the country, which demand a very large salary, which, in return, are what is called a boxoffice draw or a boxoffice attraction, makes the name band.

Q. Have you an opinion as to whether or not it is necessary to the successful operation of a first-class ballroom that name bands be available to the operator thereof?

Mr. Doherty: Just a minute: Subject to our standing [165] objection, your Honor, that it is hearsay; that it is not a matter that is subject to proof by an expert witness or expert testimony; incompetent, irrelevant and hearsay.

The Court: Overruled.

Mr. Christensen: You may answer, sir.

A. I would say that the top-notch ballrooms, with a few exceptions, do need name bands. They are not always available to them; but when they can get them, they buy them at what they call "giving it the added punch" to gain momentum of attendance.

Q. A list of bands and band leaders was mentioned here this morning and the question asked concerning as



(Testimony of Ralph Wonders)

to whether or not they are name bands. Let me, as well as I can, repeat that list. I think the first was Henry Busse. Is he a name band?

A. I would consider him a semi-name band.

Q. Tiny Hill? A. No, sir.

Q. Wingie Manoni? A. Wingie Manoni?

Q. I beg your pardon. I stand corrected.

A. No.

Q. Sully Mason? A. No, sir.

Q. Ancil Hill? A. No, sir. [166]

Q. Ada Leonard? A. No, sir.

Q. Shorty Sherock? A. No, sir.

Q. Muzzie Marcelina? A. No, sir.

Q. Chris Cross? A. No, sir.

Q. Eddie Miller? A. No, sir.

Q. Pinkie Tomlin? A. No, sir.

Q. Boyd Rayburn? A. No, sir.

Q. David Willis? A. I don't even know him.

Q. When was the first name band of the G. A. C. available to an operator or operators in the San Diego area during the year 1945, sir?

A. It was sometime after Decoration Day. I wouldn't say the date or the month because I would have to check it.

Q. Will you tell me the name of that band?

A. Frankie Carl. I believe it was Frankie Carl.

Mr. Christensen: You may examine, sir.

Mr. Doherty: Is that all? [167]

Mr. Christensen: Thank you.

(Testimony of Ralph Wonders)

Cross-Examination

By Mr. Doherty:

Q. Mr. Wonders, I don't know what you will testify to, but I hope I can prove some of what I think are matters we all agree on in this case. All members of bands, including band leaders, are members of the American Federation of Musicians, are they not?

A. Yes, sir.

Q. And that has been a practice in existence for quite a few years, many years, in fact?

A. Yes, sir.

Q. And your company, the General Amusement Company, General Amusement Corporation I think is the correct name, have offices in New York and Chicago and here and some other places?

A. Cincinnati.

Q. Cincinnati? A. Yes, sir.

Q. And you do a national business?

A. Yes, sir.

Q. Before you can do any business as an employment agent—and that is the capacity in which you act, is it not?

A. Yes, sir. [168]

Q. Before you can do any business as an employment agency representing bands or band leaders, you must have a license from the American Federation of Musicians?

A. That is right.

Q. And your company has such a license?

A. Yes, sir.

Q. And that is true of every other individual or corporation that makes contracts or purports to represent members of the American Federation of Musicians?

A. That is right.

(Testimony of Ralph Wonders)

Q. Uniform throughout the United States?

A. Yes, sir.

Q. And they prescribe the kind of a contract that shall exist between the employment agent and the American Federation of Musicians?

A. Yes, sir.

Q. They even go so far as to say what you can draw commissions on, do they not?      A. Yes, sir.

Q. They say you cannot draw commissions on certain items, and, in a way, tell you what you can draw commissions on?      A. Yes, sir.

Q. And your only interest—that is, when I say yours, I mean your fine corporation—the only interest you have [169] in placing bands is as an employment agent or representative?      A. That is right.

Q. You counsel with the band leader and advise him a good place to put a band, and you try to give him the best service possible?      A. That is right.

Q. And it is your job, is it not, to see that bands and band leaders are given the best type of assignments so that they will get the best compensation that they can, commensurate with your good standing?

A. That is right. [170]

Q. In other words, you wouldn't put a band into a location that you felt might draw in money temporarily but ultimately would hurt the standing of the band, would you?      A. I don't think so.

Q. In other words, you look first, as your duty to the band leader, to give him the best service possible?

A. That is our job.

Q. And you always endeavor to do that?

A. We try.

(Testimony of Ralph Wonders)

Q. And commissions are more or less uniform that are paid for the services rendered?

A. All the agencies are entitled to the same commission.

Q. Now, the American Federation of Musicians, the Musicians' Union, prescribe the form of contract that you have between the agency and the band leader?

A. Yes.

Q. In other words, you must take the contract as handed you by the Musicians' Union, and that is the only contract you can have?

A. That is right.

Q. Just as they prescribe it?

A. Right.

Q. And those contracts provide, do they not, that no engagement can be made without the consent and the approval of the band leader? [171]

A. That's right.

Q. And you always get his consent, do you not?

A. On most of the occasions. Sometimes we don't. Sometimes they leave it up to us.

Q. When they leave it up to you, they have told you to go ahead and do it on your own judgment?

A. That's right.

Q. But you have already asked them before you have done so?

A. Yes, sir.

Q. When you say in some instances they don't, you mean sometimes they don't sign the written authorization?

A. That's right.

Q. But you always get their consent before you make any such arrangement?

A. Most of the times.

Q. The band leader reserves the right to deal direct with any balroom, if he sees fit, does he not?

A. They do at times.

(Testimony of Ralph Wonders)

Q. And sometimes they do that without consulting you?      A. That's right.

Q. And sometimes against your wishes—

A. Yes, sir.

Q. —and advice, do they not?

A. Yes, sir. [172]

Q. In other words, any ballroom owner that wants a band that your organization has a contract with can go right around you and ignore you, and deal direct with the band leader, if he sees fit?

A. Nothing can stop him.

Q. How?      A. Nothing can stop him.

Mr. Doherty: Yes. I don't know, your Honor, and I think it would be just encumbering the record to put in these contracts. They are long typewritten or printed documents, and it seems everybody has agreed as to just what they are. I will keep them in court available at all times, and at any time that your Honor or any juror should indicate they would like to have them, they will be here. They are long documents with a lot of fine print. We will have them available if it is necessary. I had in mind having this witness identify them and offer them in evidence, but apparently there is no issue about them.

Mr. Christensen: I am willing that they be admitted.

Mr. Doherty: I am also willing that they be admitted, but wouldn't it just encumber the record. But if you want them, they are here.

Mr. Christensen: I don't have any reason for having them, but I will not raise any objection.

The Court: There doesn't seem to be any question but [173] what that is a general standardized form of

(Testimony of Ralph Wonders)

contract that is utilized regardless of the agency and regardless of the band.

Mr. Christensen: I believe that is correct, with the only exception that, for example, in the contracts used by Music Corporation of America they have their names printed on them. That is the only difference.

The Court: Do the other agencies also? Do you?

The Witness: We have our name on it.

The Court: Naturally, the agency that is dealing would have its own name there. As I understand it, they are all the same except for that. It just accumulates expense to the litigants to have them in, but if you want them in, you can have them. I wouldn't think it would be necessary.

Mr. Christensen: I don't think it is necessary.

Mr. Doherty: I will have them in court and if a question comes up, we will have them available.

The Court: We will mark them for identification.

Mr. Doherty: Miss Reporter, I am now submitting what is known as a Farm B contract of the American Federation of Musicians as Defendants' Exhibit A.

The Clerk: Defendants' Exhibit A, for identification.

(The document referred to was marked as Defendants' Exhibit A, for identification.)

Mr. Doherty: And as Defendants' Exhibit B, I am offering the Musicians Mutual Protective Association Local 47, A. F. of M., [174] Los Angeles contract, being the contract between the band leader and the agency, such as the General Amusement Corporation, the Music Corporation of America, and so forth.



(Testimony of Ralph Wonders)

The Clerk: Defendants' B.

Mr. Doherty: Those are marked only for identification.

The Court: You are marking those for identification only, Mr. Hooser?

The Clerk: For identification only, yes, sir.

(The document referred to was marked as Defendants' Exhibit B, for identification.)

Q. By Mr. Doherty: Now, Mr. Wonders,—is it Wonder or Wonders?

A. W-o-n-d-e-r-s, Wonders.

Q. Thank you, Mr. Wonders. There is no such thing in this area as bands in the San Diego area? They don't have any prominent name bands that originate and make their headquarters there, do they?

A. In San Diego?

Q. Yes.

A. Name bands, you are talking about?

Q. Bands of some prominence.

A. There are several bands down there, local bands. I wouldn't say they are prominent. It might be in the particular place they have been in they become a little popular in that particular spot. [175]

Q. In other words, you find some place in your broad experience where a band, although not known in New York, will outdraw any band in the country in Oklahoma? Like, for instance, Bob Wills?

A. Well, Bob Wills is one of the top name bands of his calibre in the country, so far as the type of music is concerned.

Q. That is the western type?

A. Yes, sir.

(Testimony of Ralph Wonders)

Q. Don't you find sometimes a band in a local area that will outdraw bands that are paid much higher wages or compensation; in other words, have a strong local following?

A. My experience has been that there are territorial name bands.

Q. Yes.

A. But my experience is when you bring in a top name band, they will outdraw them 20 to 1. There may be an exception to that once in a while, that is right.

Q. In other words, when you bring in Tommy Dorsey, he would outdraw a territorial name band?

A. Yes, sir.

Q. And sometimes that might not happen?

A. Nothing is impossible.

Q. Now, these bands that you have listed and you represent operate throughout the United States, don't they? [176]

A. Yes, sir.

Q. And when they come here, they have to bring their entire staff along, and some one must pay the transportation?

A. That's right.

Q. And that is usually the person who first engages him, is it not? In other words, the first spot you place them in must have them there long enough in order to justify the payment not only of his weekly compensation but also the traveling expenses?

A. Well, that is possible, and then again the man figures, the band leader figures if we can set up a tour for him of so many weeks at Mission Beach, or Pacific Square, or at the Palladium, and so many one-nighters, a radio shot, a guest spot, he spreads his transportation over all.

(Testimony of Ralph Wonders)

Q. In other words, in addition to his fixed compensation he adds on a pro rata share for his traveling expenses?

A. He figures on so much for so many miles.

Q. And there is no place in Los Angeles where you can just press a button and get any band you want?

A. No, **sir**.

Q. The band has to be arranged for in advance?

A. Yes, **sir**.

Q. Sometimes 60 or 90 days in advance?

A. Yes, **sir**.

Q. And possibly even longer than that? [177]

A. That's right.

Q. In other words, if you know a band is playing in New York, or Chicago, or New Orleans, and you know they have an engagement there, you say, "Can you come to Los Angeles on a certain date? I can give you a certain spot here, another at Santa Barbara, and Fresno, and Sacramento, San Francisco, Seattle and Portland, over a period of six weeks, eight weeks," and so forth, and then he will agree to come? A. That's right.

Q. And sometimes you will book them as long ahead as three or fourth months? A. Yes, **sir**.

Q. It is a great game of showmanship, isn't it, Mr. Wonders, advertising, publicity, personality, and all?

A. It is quite a job.

Q. And this matter of arranging, of rewriting the music, I understood this morning from this talk about arrangements, the arrangements are just printed music?

A. The arrangement is made and from the arrangement the score is written, the arrangement itself copied,

(Testimony of Ralph Wonders)

and that is what the boys play off of, the copy of the arrangement.

Q. The arrangement is something that is printed on some paper? A. Yes, sir.

Q. In other words, it is like a piece of sheet music, [178] and that goes before the band?

A. Yes, except it is arranged for the particular instruments in the band.

Q. They take some well-known selection and rewrite the timing and put in new instruments, and it sounds differently?

A. That's right. Different bands have a different style, and some will take a tune that is a waltz and put it into a fox trot, or something else.

Q. Might take Lohengrin's Wedding March and turn it into something else?

A. That's right. They might take anything.

Q. When you speak of bands being available in the San Diego area in 1945 being just five in number of yours, that didn't mean that you just had five bands in the United States, did it? A. No, sir.

Q. And if you had ample engagements out here, you would have brought more bands into this area?

A. If they could have been made available. They may have had engagements in the other parts of the country so we couldn't bring them out at any price at any time.

Q. Do you have more bands than your competitors in some particular localities?

A. Well, that might be.

Q. It is a competitive business that you are in, is it [179] not? A. Yes, sir.

(Testimony of Ralph Wonders)

Q. You do your best to make a contract, as an employment agency, with various bands and various attractions, and you have competing with you the William Morris Agency, the Music Corporation of America, the Fredricks Brothers Agency, and others?

A. Many more.

Q. And it is a matter of selling? In other words, the man has got his labor and his talent for sale, and you try to bid for it to act as his agent; isn't that the story?

A. Yes. I don't quite understand what you are getting at. Will you repeat it?

Q. Well, it is this: I am a band leader, I render services of a particular and special type, I want an agent to represent me, and I have before me a choice of agencies who are competitors?

A. That's right.

Q. And I choose the one I want?

A. That's right.

Q. No one can force me to choose Music Corporation of America or General Amusement Corporation, or any other company?

A. No, sir.

Q. He uses his own judgment and states who he is going [180] to have represent him?

A. That's right.

Mr. Doherty: I have here a list. I showed this to Mr. Wonders, with your permission, just before 2:00 o'clock and I talked to him just a moment, Mr. Christensen, and I wanted Mr. Wonders to look it over because I do not know which of those numbers on that list his company represents. I am showing you a typewritten list.

Mr. Christensen: May I ask, Mr. Doherty, what does that purport to be, because I don't want to take your time to read it now? What does it purport to be?

(Testimony of Ralph Wonders)

Mr. Doherty: It purports to be, according to what they tell me, a group of bands, and things of that sort, some of which are represented by General Amusement Corporation, and I wanted to have him look it over and call off the names of the bands that his company represents. I haven't the slightest knowledge of it, and I was just going to let him check it.

Mr. Christensen: I think that might save time.

The Witness: It is entirely up to you, gentlemen.

Q. By Mr. Doherty: Would you look at this list and call off the names of the various bands that General Amusement Corporation represents, and did represent in 1945? That doesn't mean now. A. In 1945?

Q. Yes. [181]

A. Mitchel Ayres. Do you want bands, and attractions as well?

Q. You better give bands and attractions also, because you sold both, didn't you? A. Yes, sir.

Mr. Christensen: Just a moment. I don't believe there is any issue or materiality as to attractions.

The Court: I don't believe there is.

Mr. Doherty: Well, there was one, the King Sisters.

Mr. Christensen: Well, I will withdraw it, if it will help any, and would you ask the witness to designate which is an attraction and which is a band?

The Court: Yes, when you give the name just distinguish as between an attraction and a band, if you will, please.

The Witness: Mitchel Ayres, a band. Gracie Barrie is an attraction, a singer. Billy Blair is a band. Harry Bluestone is a violinist who is going into radio now; he does nothing but radio, and he doesn't do ballroom, and



(Testimony of Ralph Wonders)

so forth. Randy Brooks is a band. Bobby Byrne is a band. Frankie Carr is a band. Benny Carter is a band. Lee Castle is a band.

The Court: May I interrupt you a moment? He asked also that you designated those that your company was the agent for.

The Witness: Well, I was only reading what we are [182] agents of.

Mr. Doherty: As I understand, your Honor, he is only calling off those which his corporation represents.

The Witness: Did I say Lee Castle? I don't know whether—I am not sure on Lee Castle. Spade Cooley, a band. Nick Cochrane, a band. Sonny Dunham, a band. Chuck Foster, a band. Ziggy Elman is supposed to have a band, is in the Army and coming out. Harry Gibson is an attraction. Glen Gray, a band. Woody Herman, a band. Eddie Heywood, a band. Jimmy Higson, a band. Roberta Hollywood, a singer or a dancer. Illinois Jacquet, a band. Louie Jordan and his Tympany Five, a band. Stan Kenton, a band. Lloyd LaBrie, a band. Johnny Long, a band. Clyde Lucas, a band. McFarland Twins, a band. Lani McIntire, a band. Jay McShanne, a band. Muzzy Marcellino, a band. Tony Pastor, a band. Don Ricardo, a band. Al Russell, a band, a small band. Miguelito Valdez, a Spanish singer. Joe Venuti, a band. Jerry Wald, a band. Bobby Ramos, a band.

Do you want me to go through the whole bunch, all these papers? I am up to Frederick Brothers now.

Q. By Mr. Doherty: No. Are there other bands that you represent, other than those contained on this list?

A. Oh, yes, certainly.

(Testimony of Ralph Wonders)

Q. Many others? [183]

A. Quite a few others, yes, sir.

Q. This list was just hurriedly prepared and handed to me. Those other bands sometimes, that is, the other bands that you have named, they also perform in this territory.

A. At times.

Q. You wouldn't have a band come out here and perform unless you were asured that it would justify the trip out here, would you?

A. No, sir.

Q. The population is more dense in the East, and the trips are shorter, and you can maybe deal to their better advantages there through your company?

A. That's right.

Q. Now, this matter of name bands is a matter quite in dispute, as to what is and is not a name band?

A. There has been a lot of controversy about it.

Q. A lot of controversy?

A. That's right.

Q. And band leaders that you think are not name bands, they think they are, don't they?

A. I presume every one thinks they are a name band.

Q. Yes. In other words, a band may take a name like the Frank Doherty band, and I am a leader, and I think I am a name band because I have an ad in the paper and an ad on the radio, and some billboards, and a sign on the entrance to the [184] ballroom, and so forth, and I get a crowd coming in, and I think I am a name band?

A. You may think you are, but you wouldn't be. You wouldn't be a name band in my estimation.

Q. Not in your estimation, but in my estimation I would be?

A. That might be possible.

Q. And in the opinion of my musicians we might be a name band because I drew a bigger crowd than most,

(Testimony of Ralph Wonders)

and they think they are a name band; isn't that right?  
[185]           A. It might be.

Q. So this matter of what is and what is not a name band is a matter of considerable controversy even in the industry, or differences of opinion, I might say, rather than controversy?           A. That is possible.

Q. Is that right?           A. Yes, sir.

Q. You brought in a conversation briefly about splitting commissions with M. C. A. You say you split commissions on two occasions down there on bands that you put into either Pacific Square or Mission Beach?

A. On two occasions.

Q. Two?           A. On two occasions.

Q. Yes. They did not make a demand that the band was not going to be put in there unless you split the commissions, did they? They just wanted a cut on your services?           A. Well, I—

Q. I will withdraw the question because it may not be a fair question either way.

The Witness: I can answer it if you like it.

Q. Sometimes in the business you get a split commission with some other agency?           A. Yes. [186]

Q. I mean it is not unusual for agencies to split commissions with each other, is it?

A. They do it on occasions. They do not like to.

Q. Did not M. C. A., Music Corporation of America, call on you to place bands in Pacific Square and also at Mission Beach, where they thought your band was the best band in this area to fill that bill?           A. Yes.

(Testimony of Ralph Wonders)

Q. In other words, they pushed aside their band and put in yours?

A. I know of one occasion Mr. Bishop took a band out and put one of our bands in, for the simple reason that the band that we had was a much bigger draw and Mr. Daillard should have played it because of that reason, and it was pushed out and ours was put in.

Q. And while Mr. Daillard operated at Pacific Square, you said you placed bands in there, your organization?

A. I have sold a lot of bands and attractions to Mr. Daillard previous and over a period of years.

Q. And you sold bands and attractions out at Mission Beach while Mr. Daillard operated? A. Yes.

Q. Mr. Wonders, you testified you had known Mr. Finley about 18 months—I believe that is correct, isn't it? You met him about 18 months ago? [187]

A. About a year and a half ago I met Mr. Finley.

Q. And you made an engagement or, rather, an appointment for one of your bands to play down in his ballroom, and you demanded a two weeks' guarantee before you would place it there? A. That's right.

Q. And in your business, you keep in touch with people in the ballroom business, do you not? A. Yes, sir.

Q. And you at that time did not have any record of past performances by Mr. Finley in the ballroom business, did you?

A. Well, whether I had a record, I didn't have any record, because I knew that he was running the Trianon ballroom in San Diego, but I had never done business with Mr. Finley and it is customary, the first time you take on a new client, that you check into the situation.

(Testimony of Ralph Wonders)

Q. That is the first time you had booked him for any business? A. Yes, sir.

Q. You are always out looking for new business, aren't you? A. Yes, sir.

Q. And doing your best to place the bands at the most advantageous places? [188] A. That is right.

Q. Did you supply any bands for Mr. Finley in the Trianon? A. Yes, sir.

Q. What type of bands?

A. You might classify as a B band.

Q. That is not higher—

A. Not the top name band; no, sir.

Q. Not the top salary bands? A. No, sir.

Q. Then, there are locations where you have got to use your good judgment as to whether you put in a certain band at one compensation, or a lower scale or a higher scale?

A. Well, I don't think that we use our ideas on that. It is whether the ballroom can stand the top name band, according to its capacity.

Q. That is, when you pay a flat compensation; but when you are paying on a percentage, you would want to know more about the ballroom, wouldn't you?

A. Definitely.

Q. In other words, if you had a flat amount of \$3,000 or \$2,000 or \$5,000 for an engagement, and you had the money up, why, you would go ahead and play any place that was suitable? A. Yes, sir. [189]

(Testimony of Ralph Wonders)

Q. But if you were paying on a percentage, you would want to know where you were placing that band before you put it there?

A. You would want to know the capacity.

Q. The capacity of the floor, yes. A. Yes.

Mr. Doherty: I think that is all, Mr. Wonders.

Re-Direct Examination

By Mr. Christensen:

Q. That question, you said you could answer and Mr. Doherty withdrew it, as I remember, was this: Was any demand made upon you for the splitting of commission by M. C. A. ? Go ahead and answer. What is your answer?

A. My answer was, there was a demand made on me by Stan Kenton's orchestra.

Q. By whom? A. By Mr. Bishop.

Q. One of the defendants in this action?

A. Well, I don't know who is suing who.

Q. What would happen if you did not split the commissions there?

Mr. Doherty: That would be his conclusion, your Honor.

The Court: Yes.

Q. By Mr. Christensen: Were you told what would happen if you did not? [190] A. No.

Q. What did he say to you?

A. Well, we had Stan Kenton on the Bob Hope show; that is a radio program; and with a band of that size and the payroll, we needed more work besides just having the radio show. So that over a period of 39 weeks we had to keep Kenton busy otherwise too, three, four nights a week on one-nighters. We managed to get a picture or



(Testimony of Ralph Wonders)

two, shorts, records. We never could get Stan Kenton into Mission Beach or—pardon me, into Pacific Square.

So Mr. Bishop called me and told me that he would put him in if we would split commissions, and I told him “No.”

Mr. Bishop then got together with Mr. Carlos Castell, who was Mr. Stan Kenton’s manager, and said, “We could give you a lot of weekends at the Pacific Square, if you will have General Amusement split commissions.”

So Mr. Castell came to my office, said he wanted the band in Pacific Square; if we had to split commission, we had to split it. We were in the last couple of weekends of the 39 weeks and we had about run out of our line. We had no place else to go.

He said, “I want the band in there.” Well, I refused to split commissions.

At that time Mr. Rockwell was in town, who is the president of General Amusement Corporation; and he went to [191] Mr. Rockwell and Mr. Rockwell overruled me and told me to split commissions, and the band went in.

Q. And Stan Kenton later played at the Mission Beach ballroom, too, didn’t he? A. Yes, sir.

Q. In the business, booking business, are any sanctions applied by you or any of the other agencies to any of the band leaders who refuse to play where you tell them to play?

Mr. Doherty: Just a minute. I think that would call, your Honor—I object on the ground it calls for a conclusion of the witness as to what “sanctions” means.

Q. By Mr. Christensen: Well, do you do anything to them or hold up bookings or give them poor bookings?

A. If they refuse to play a certain spot?

(Testimony of Ralph Wonders)

Q. Yes.

A. No; there is nothing we can do about it.

Q. Tell me, were Freddie Martin and Stan Kenton name bands in the year 1944?

A. Well, Stan Kenton was on his way up at that time.

Q. Freddie Martin was a name band, wasn't it?

A. Yes.

Q. You have told us that there are comparatively few name bands available to the operators in the San Diego area; particularly, that was true during the year 1945, is that right? [192]

A. As far as we were concerned.

Q. Well, and so far as the other agencies were concerned, too?

A. Well, I don't—I can't answer that question.

Q. You do not know how many Music Corporation of America had?

A. No; I wouldn't have any idea. I could name some bands they had in the territory during the year, but how many, I would not want to attempt to.

Q. You have been asked concerning these contracts with the American Federation of Musicians. Do you know whether the American Federation of Musicians permit an exclusive contract by any booking agency with any ballroom operator?

A. No, sir.

Q. They do not. Do they even permit an exclusive for 48 hours?

Mr. Doherty: Unless this witness is qualified, your Honor, I object on the ground there is no foundation laid.

Mr. Christensen: It is re-direct on the cross-examination, if I might say so, your Honor, with reference to the

(Testimony of Ralph Wonders)

question concerning the American Federation of Musicians' contract.

The Court: If he knows the rules of the Federation. I presume those rules are written rules, usually—

Mr. Warne: They are the best evidence, your Honor.  
[193]

The Court: —usually the American Federation of Labor have their activities in writing so that they can be read. I do not know whether they do in this particular. I think they do. I think, from another case that I tried—I am sure that they had regulations of that type in writing.

Mr. Christensen: Very well.

Q. Does the General Amusement Corporation have any 48-hour exclusive booking with any ballroom operator?

Mr. Doherty: I object as immaterial and incompetent.

The Court: Read it again, Mr. Reporter.

(Question read by the reporter.)

The Court: Overruled.

A. No; we do not.

Q. By Mr. Christensen: Would the practical effect of such a 48-hour exclusive booking agency mean that a ballroom operator could monopolize all of the bands available in a particular area?

Mr. Doherty: Just a minute. I object on the ground it calls for the conclusion of the witness, argumentative.

The Court: I do not think it is a matter of expert testimony. That is a factual matter to be developed by proper questions.

Mr. Christensen: Very well. That is all.

Mr. Doherty: Just one question, Mr. Wonders. [194]

(Testimony of Ralph Wonders)

Re-Cross Examination

By Mr. Doherty:

Q. Mr. Ames Bishop, as referred to, is just a salesman for Music Corporation of America, isn't he?

A. Yes, sir.

Q. And the Pacific Gardens (Square) was his account?

A. Yes, sir.

Q. And he just wanted to get some compensation out of one of your bands, didn't he?

A. Probably. I don't know.

Q. How? A. He probably did.

Q. Yes. He wanted you, if you put a band in there, he wanted a cut on your commission?

A. That is right.

Mr. Christensen: That is calling for a conclusion or opinion of the witness there, your Honor, as to what Mr. Bishop had in mind when he demanded it.

The Court: The conversation occurred between the two men. Overruled. He has answered it, I believe.

(Answer read by the reporter.)

Mr. Doherty: That is all, Mr. Wonders.

Q. By Mr. Christensen: Was there any other reason why he wanted you to pay him?

Mr. Doherty: If he knows. [195]

A. I will answer it if you want me to. I don't know of any other reason. I mean he may have had a lot of other reasons.

Mr. Christensen: All right; thank you.

The Court: I wanted to ask you a question or two, Mr. Wonders, on this term "name bands". In your answer to several of the questions, you stated, "We sold

(Testimony of Ralph Wonders)

him" in referring to these name bands. What did you mean by using that personal pronoun "him"?

The Witness: Well, I was referring to the leader, which would be Tommy Dorsey or Woody Herman, because all the leaders are, mostly, with few exceptions on one or two girl bands in existence.

The Court: Well, is the value in the band, in your trade or your profession or art, as you choose to call it—isn't that value in the individual leaders?

The Witness: There are different types of leaders. Some bands are built around a leader with a lot of personality. The leader is the main attraction of the band. In other cases, the band, the leader is an important part of it, but if the band, musically, is great, and outside of being a good instrumentalist, he is not a great personality.

The Court: Isn't the composition of these name bands continuous, or is it the player group, we will call it, as distinguished from the leaders in that chain? [196]

The Witness: I don't quite understand you.

The Court: I presume that a band has a number of instruments in it?

The Witness: The bands will vary anywhere from trios up to 20 or 30 pieces.

The Court: So that is true in the name band as well as any other aggregation of individuals who play instruments to diffuse music; isn't that true?

The Witness: Yes, sir.

The Court: Does the composition of these so-called name bands change? Do the players change frequently?

The Witness: The players in the bands?

The Court: That is right.

The Witness: Yes; they change quite frequently.

(Testimony of Ralph Wonders)

The Court: Well, what is it, then, that makes the band of a business asset excepting the leaders?

The Witness: Well, it is the arrangements, the tunes, how they play them, the style of the band.

The Court: Does the leader make the arrangements?

The Witness: Sometimes and sometimes not. Sometimes he has a crew of arrangers that do all the arrangements. Some leaders are arrangers themselves. The leader, as a rule, will O.K. the arrangement, the final O.K. on it.

The Court: Will that be because of his peculiarities, his artistry, his idiosyncracies, his gyrations, his gymnastic [197] activities?

The Witness: It might be.

The Court: Isn't that the asset that makes him valuable?

The Witness: That is right.

The Court: And that makes his band valueable?

The Witness: That is a part of it.

The Court: That is purely an individual proceeding, isn't it?

The Witness: Well, I don't know how to explain it to you. I mean, for instance, Woody Herman is a vocalist, a very fine clarinet player, and nice personality, sings well; but behind him, with all that, with the great personality—and he is very well liked—he has a wonderful musical organization behind him. In other words, it is to his advantage to build up his organization, and not just to get a C-first, what we call first chairman or first trumpet man or first good pianist. All of those good men in the band help to make him, but help to make it a great organization. He could probably carry on with inferior men for



(Testimony of Ralph Wonders)

a long time, but if he could not deliver the brand of music that he is accustomed to delivery, he would not remain on top.

The Court: Do you classify these name bands in any particular category? For instance, are there name bands in dancing music and name bands in radio music? [198]

The Witness: Oh, yes.

The Court: And so there isn't any general classification in the art or trade or profession or business, or whatever you choose to call it?

The Witness: There may be a top name band on the air that does not even play ballrooms, particularly that we were referring to here, as I understood, was ballrooms. There are certain people on the air, like Andre Castellanas, that never play dance music, but so far as his air programs, he is one of the top musical directors of the air.

The Court: Well, let us take one of those first, not for the purpose of giving anyone any particular publicity, but let us take Ray Noble, for instance. Supposing he was to lead a band at a dance hall, would that draw a crowd?

The Witness: Yes.

The Court: Would you call that a name band?

The Witness: I would say so. Ray Noble has been on the air for a long period of time on the Edgar Bergen show. He not only is on the air musically, but he is on the air reading lines, script.

The Court: Let us take Billy Mills; how would he fit into the designation if he led a band on a dance floor where he was the name band?

The Witness: I could answer that question. I have seen some dates that have been booked on Billy Mills, and he did [199] not draw a tremendous crowd.

(Testimony of Ralph Wonders)

The Court: Would that be because he is not as well known as Ray Noble, for instance?

The Witness: No. I think I can answer that this way: That Billy Mills is not known as a dance band, where Ray Noble, when he first came into this country, came over here with a dance band and opened up on the top of Radio City, one of the finest select restaurants in the country. Ray Noble, in addition to that, has written a lot of very marvelous tunes, himself, which he is known for, which he has recorded; so the kids, or the generation of today know Ray Noble as a dance man.

The Court: It is that element which makes the value, isn't it, the element that you have just described in that language?

The Witness: I would think so; yes, sir.

The Court: Let us take another. Supposing Paul Whiteman was to direct a band in one of these ballrooms, would you classify that as a name band?

The Witness: Definitely.

The Court: And Phil Harris?

The Witness: The same thing.

The Court: Now, isn't it the individual that constitutes the element that, in essence, is the name band?

The Witness: Well, I still say it is what is around [200] him, the elements that lead up to it. I mean with Paul Whiteman, in the case of Paul Whiteman, Paul Whiteman started right here, practically started here, at Denver, or here in L. A.

The Court: Yes; he started here.

The Witness: And he started as a dance band. He was the top dance band of the country for years.

(Testimony of Ralph Wonders)

The Court: Then there are classifications in the art or profession or enterprise—I am not trying to designate it; I am trying to include all the terms that indicate the entity—there are name bands in radio performance, in theatrical performance, in ballroom activities, and perhaps in many other lines of public entertainment, aren't there?

The Witness: Yes, sir; yes, sir.

The Court: Then you could not classify the designation "name band" generally to a commercial entity, could you?

The Witness: No. Even the—name bands, as I have said before, when I was talking about one set of name bands, which we figure there are so many in the top brackets, and which some drop off and new ones come up into—particularly what we were talking about here were ballroom dance bands.

The Court: Would this be a proper designation of what we are talking about: A group of musicians who are playing under the direction of an individual whose name the band takes? [201]

The Witness: If you mean if Paul Whiteman organized a **band**?

The Court: I do not want to mention any particular name. Just read the question. If it is not clear, I will clarify it.

The Witness: It is not quite clear to me, sir.

(Question read by the reporter.)

The Court: Does that fulfill your idea of a name band?

The Witness: Yes, sir.

The Court: And you think that one of the chief elements that go to make up that name band is the indi-

(Testimony of Ralph Wonders)

viduality and artistry and personality, as you would call it?

The Witness: Yes, sir.

The Court: Of the leader?

The Witness: Yes, sir; that has a lot to do with it.

The Court: Whose name the band takes?

The Witness: Yes, sir.

The Court: That is all.

Mr. Doherty: There is one question I overlooked asking. May I?

Q. Who owns the instruments in the band?

A. The individual players.

Q. In other words, the individual musician owns his own instrument? A. Yes, sir. [202]

Q. And wherever he moves across the country, the instrument moves with him just like his coat?

A. Yes, sir; his tool.

Q. What?

A. That is his tool. Without that he could not do his work.

Q. That is the artist's instrument?

A. That is right.

Mr. Doherty: Thanks, Mr. Wonders.

Mr. Christensen: Mr. Wonders, let me ask you a few more questions, then.

#### Re-Direct Examination

By Mr. Christensen:

Q. In order that a name band be a name band for more than, say, just a very short period of time, it is necessary, is it not, to have more than just a name of an individual standing up on the front of the rostrum?

A. Well—

(Testimony of Ralph Wonders)

Q. There has got to be something behind him, doesn't there?

The Court: Well, that would be obvious.

A. Yes, definitely.

Q. By Mr. Christensen: That has to be an aggregation of musicians that can play together and play the style?

A. Created by the arranger, or whoever it is making the [203] arrangements for the band.

Q. What about the Glen Miller band?

A. The present Glen Miller band?

Q. Yes.

A. Well, the present Glen Miller band which was abroad during the war, directed by Glen Miller, is now back in this country. Glen Miller, as you know, was killed—missing, rather—I am sorry—and the band came back intact and the arranger was still with the band, who has been with Mr. Miller for a long time, a man by the name of Jerry Gray, still making arrangements for the band. A very important personality in that band for many years past, while Mr. Miller was on the Coast, was a man named Beneke, and the Glen Miller band, broadcasting from overseas, did such a wonderful job that when we brought the band back we put the personality of Beneke in front of it. They are on their first engagement now at the Capitol Theatre. They are advertising their Glen Miller band, directed by.

Q. It has continued to be known as the Glen Miller band, even after Glen Miller was no longer with them?

A. That is right.

(Testimony of Ralph Wonders)

Q. It was that aggregation of musicians who played that particular style of music that made that a name band, wasn't it?

A. Yes. You see, they still have all the book of [204] arrangements that went with the band abroad, and passed those arrangements, the book of arrangements were passed right on to this band now, which still remains the same.

Mr. Christensen: Thank you. That is what I wanted to know.

#### Re-Cross-Examination

By Mr. Doherty:

Q. Your corporation represents that band, does it not?

A. Glen Miller?

Q. Yes.

A. Yes, sir; we have for a number of years.

Mr. Doherty: There was one other question I had a note of, your Honor, that I overlooked. May I ask it?

The Court: Yes.

Q. By Mr. Doherty: When was this conversation by you, in January, a year ago, with Henry Busse at the hotel in San Francisco, respecting an engagement down at Mission Beach? What date in January? In other words, respecting January the 1st, was it immediately afterwards or late in the month, or in December?

A. I don't know exactly. It was while Mr. Busse was playing the Palace Hotel. I could give you almost a reasonable date on it if I could look up when he was at the Palace. I can't say whether it was December or January. It could have been December. [205]



(Testimony of Ralph Wonders)

Q. It might have been in December, 1944?

A. It was whenever he was playing the Palace Hotel. I don't know that date.

Mr. Doherty: Yes. That is all.

The Court: Call the next witness.

Mr. Christensen: Mr. Larry Shea, please.

LARRY SHEA,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Larry Shea, S-h-e-a.

Direct Examination

By Mr. Christensen:

Q. Mr. Shea, your business, occupation or profession, sir, is what?

A. Western Division Manager of Ascap.

Q. Ascap. Let's see; that is the American Society of Composers—

A. Authors and Publishers.

Q. And you have been with that organization for what period of time, sir?

A. Four years in this locality.

Q. And prior to that, sir? A. New York.

Q. For what period of time? [206]

A. About six months. Previous to that, with the Fred Waring's Pennsylvanians.

Q. That is an orchestra? A. Yes, sir.

Q. You have been in the band and entertainment business for what period of time, sir?

A. 1929—17 years.

(Testimony of Larry Shea)

Q. Ascap licenses ballrooms to play music, copyrighted by members of your organization; that is true, is it, sir?

A. Yes, sir.

Q. And is there any different scale of prices or fee—charge, anyhow—depending upon the class of a ballroom?

A. Yes, sir.

Q. Can you tell me, if you are acquainted with the Mission Beach ballroom in San Diego?

A. Very well.

Q. What class ballroom is that? A. "A."

Q. Is "A" the top?

A. The highest; yes, sir.

Q. Do you know what is mean by the term "name bands"?

Mr. Doherty: Just a minute. There is no foundation laid. We object on that ground.

The Court: I think you had better qualify him a little further, Mr. Christensen. [207]

Q. By Mr. Christensen: Do you license on the basis of whether the ballroom plays name bands or semi-name bands or no-name bands?

A. That is one of the factors; yes, sir.

Q. Are you acquainted with the various bands and orchestras playing throughout at least through the West Coast area? A. Yes, sir.

Q. And you have told us you have been in the New York area; and so, may I add throughout parts of the United States would your answer be the same?

A. Yes, sir.

Q. Do you know what is meant by name bands?

A. Yes, sir.

(Testimony of Larry Shea)

Q. Your organization makes such a classification, too, doesn't it? A. Yes, sir.

Q. Will you please tell what a name band is in the ballroom business?

A. Well, a name band is, in Ascap's classification, a musical organization that commands a premium price from the operator of the ballroom, as opposed to what we term a semi-name or a scale band which, unto itself, has an attraction to the public of getting a larger number or group of that public into that particular ballroom, as opposed to [208] another ballroom located across the street that would have everything else that that particular ballroom has in the way of service and refreshments and everything else, except that they had a local scale band.

Q. What are some of the elements or items that you take into consideration in classifying your bands as to whether it is scale, semi or name band? In other words, what makes it a name band?

A. Well, that is—it is not a difficult question to answer. It is one that is very difficult to answer from a standpoint of directly answering. I would have to—oh, I would have to more or less propose a hypothetical case.

A name band is a band which, either through the medium of radio, records, transcriptions, theatre appearances, that is, stage appearances, or a series of one-nighters, as we call them, throughout the entire country has become so popular that if I went into Oskaloosa, Wisconsin and I said to the man in the barber shop there, "I understand Whiteman is going to be on at so and so time tonight," he would know who I meant by Whiteman.

On the other hand, a semi-name band is that band or that type of band, for example, that was formerly rep-

(Testimony of Larry Shea)

resented by a person such as Stan Kenton in this area. I am not giving any factual statements here; I am just merely giving you an opinion. Stan, before he went to New York this last [209] time, was what we would call a semi-name local band. Stan became popular, and nationally popular by virtue of recordings, in my opinion. There was a certain demand for his records over the entire United States. So that I would say that the same barber shop in Oskaloosa, Wisconsin today would be able to recognize what I mean by Stan Kenton.

And on the other hand, we have a lot, particularly a lot of colored combinations in this area, that we regard as semi-name bands in character, and simply because of the fact that they will play at this place, that place and the other place in this particular area; and they, as a result of their appearance in this, that or the other place, will draw a certain following of people from one place to another who follow them.

On the other hand, I could go over to Oskaloosa, Iowa, or I could probably go over to Phoenix, Arizona and say, "Wingy Manone" to somebody and they would not know what I was talking about.

Q. I am glad you mentioned that. Let me see if you can help me with some of these bands that were named here this morning, and see if you can tell me which of them are name bands. Henry Busse?

A. Formerly a top name band; now questionable.

Q. Tiny Hill? A. No name. [210]

Q. Wingy Manone? A. Semi-name.

Q. Sully Mason? A. Sully Mason, no name.

Q. Ansil Hill? A. No name.

Q. Ada Leonard? A. No name.

(Testimony of Larry Shea)

Q. Shorty Sherock?

A. Shorty Sherock—oh, no name.

Q. Muzzy Marcellino?                   A. No name.

Q. Chris Cross?                   A. No name.

Q. Eddie Miller?                   A. No name.

Q. Pinky Tomlin?                   A. No name.

Q. Boyd Raeburn?                   A. No name?

Q. David Willis?                   A. I never heard of him. I don't know.

Mr. Christensen: Thank you. You may examine, counsel. [211]

#### Cross-Examination

By Mr. Doherty:

Q. Mr. Shea, the American Society of Composers, Authors and Publishers is an organization made up of people who make compositions of music, and you represent them, is that it? In other words, a certain person writes a piece of music and gets it copyrighted, and then your organization, if they are a member of it, represents them in licensing that for use on radio, recordings, movie pictures or what not?

A. The small performance rights, sir.

Q. Yes; what is known as the performance rights.

A. Yes, sir; the small performance rights.

Q. Yes. And you collect, of course, fees from the users, whether it is a ballroom or theatre or radio or what not, and you take your percentage out of it and pass it on to the composer?

A. That is a—we take no percentage out of it. We are merely a collection agency for the members of the Society.

(Testimony of Larry Shea)

Q. Do you charge for your services?

A. No, sir; we do not. We are maintained by the members.

Q. On dues?

A. On dues and a regular 20 per cent operating cost of Ascap's. [212]

Q. I said, you take 20 per cent of what you—

A. Well, all right; yes. I mean there is no profit involved as far as Ascap is concerned. It is merely a collection agency maintained by its membership for the collection of small performance rights.

Q. Only substantial compensation to those who run Ascap? A. That is right; surely.

Q. It is not a charitable organization at all, is it?

A. No more than your maid, butler, or anybody else; no, sir.

Q. When you fix rates for radio stations, for instance, you figure in the power of the station, don't you, and the earnings of the station on fixing your rights to be charged for and paid to Ascap? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. In other words, you do not charge all radio stations the same fee?

A. No. We make available to each and every radio station a series of four licenses, any one of which they can accept.

Q. That is depending upon the amount of their income?

A. No; depending entirely upon the amount of their use [213] of our copyrighted music, which is then fixed or determined as the fee which they pay under that particular license agreement.



(Testimony of Larry Shea)

Q. Yes. In other words, the larger that station, like KFI will pay one rate and a smaller station will pay a smaller rate?

A. KFI could pay the same identical rate as KMPR, and there is a very wide difference between KMPR and KFI. If KFI and KMPR both decide to take out, for example, a sustaining license, or a blanket commercial or blanket sustaining license.

Q. I am speaking of a blanket commercial license.

A. Blanket commercial license is based entirely upon the income of power, the wattage of the station.

Q. Coming down to halls, supposing you have the Ambassador out here and Tommy Dorsey plays there; what service or fee do you charge the Ambassador for that performance?

A. That is based entirely. Mr. Doherty, on the size, type, character, location and musical policy of that particular establishment.

Q. Irrespective of who plays in it?

A. No, sir; that is not true. The musical policy incorporates within itself who plays there.

Q. In other words, if they use what you call a B band at the Ambassador one week, are they charged a smaller [214] compensation or fee, charged a smaller compensation by you than if they used what you call an A class band?

A. We have no distinction between A and B in so far as bands are concerned. Whether or not they are name, semi-name or scale?

Q. Yes.

A. We have, in answer to your question, we would charge a higher fee for the appearance of Tommy Dorsey,

(Testimony of Larry Shea)

as you state, in the Ambassador, than we would for Ansil Hill playing there; yes, sir.

Q. And the seating capacity has something to do with that, has it?

A. The seating capacity, the fact that they have a cover charge. I am not trying to give you short answers. I am trying to shape an answer to your question. The only purpose or the only reason that a person would go into the Ambassador Hotel and agree to contract, or to contract, I should say, to pay an admission or a cover charge is because of the fact that they are being drawn there by the attraction that is featured in the Ambassador Hotel. You don't get anything for the cover charge. You pay one dollar for the privilege of sitting down and listening to somebody's music; and consequently, without our music, we feel that that particular attraction would be no attraction, and consequently we make a charge because the Ambassador Hotel, for [215] example, the potential profit is enhanced or increased by the featuring of our members' musical copyrights.

Q. And you fix the fees, your Society, don't you?

A. We fix the fees under the provisions set forth in the United States Copyright Act; yes, sir.

Q. Did the Copyright Act define how much?

A. No, no. I mean that is the basis upon which we are in existence and we—

Q. Do you tell the Ambassador how much they are going to pay you?

A. Indeed.

(Testimony of Larry Shea)

Q. And nobody has any voice in it but Ascap. In other words, the Ambassador takes it or leaves it; isn't that right?

A. Oh, they can either play our music or leave it alone, yes, sir.

Q. Yes. And you fix the fee that the Ambassador pays?      A. Yes, sir.

Q. And if the Ambassador don't want to pay it, they don't play your music?

A. In exactly the same manner if you want a box of Post Toasties and you don't want to pay 23 cents for it, then you can get some Kellogg's; in exactly the same manner.

Q. Excepting there is no Kellogg's for sale in competition with Ascap, is there? [216]

A. Oh, yes. There are seven million musical copyrights. Of course, I don't believe that Ascap is the thing in question here.

Q. I agree with you.

A. I am not defending Ascap. There are approximately seven million musical copyrights available to anyone running a commercial enterprise featuring the use of music in it that are not controlled by Ascap.

Q. Aside from Westerns, so-called, would it be possible for any band to play in this community without a license from Ascap?

Mr. Christensen: To which we object as being immaterial to any issue here.

The Court: Overruled.

A. Aside from Western would it be possible?

Mr. Doherty: Western musics—

The Court: Wait a minute. We will have it read.

(Testimony of Larry Shea)

The Witness: Oh, I am sorry.

The Court: We have a reporter.

Q. By Mr. Doherty: Aside from the so-called copyrighted Western music, taking the bands as they are now played in this community, do you know of any band that could perform in any location here without Ascap's license?

A. Not and cater to the musical tastes of the public; no, sir. [217]

Q. Now, the premium price that you say is one of the elements of the name band, the Musicians' Union always prescribes a minimum price to be paid for their musicians; in other words, they cannot play for less; that is right, isn't it?

A. That is what is called "scale."

Q. Yes; that is the scale.

A. Yes, sir.

Q. Then, anything above scale, you begin to get into the so-called semi-name or B-name or A-name bands?

A. Yes, sir.

Q. Depending upon how much above scale they are?

A. Yes, sir.

Q. And your fees are based somewhat on the compensation received, aren't they?

A. No, sir.

Q. I mean into the ballroom? A. No, sir.

Q. In other words, you again say that Tommy Dorsey, receiving a scale of so much per week, that place would not be charged more by Ascap than if Pinky Tomlin played in there?

A. Why, yes, but not by virtue of any knowledge we would take of the difference between the amount to Pinky Tomlin and Tommy Dorsey. That would not enter into

(Testimony of Larry Shea)

it. It [218] is just merely the fact that we establish the fact by popular acceptance of Tommy Dorsey as compared to Pinky Tomlin, which makes Tommy Dorsey a name band and Pinky Tomlin no name band.

Q. That is your determination of that?

A. That is our interpretation. That is all I am giving you.

Q. And your determination is the amount of fees you are going to charge?

A. Yes, sir.

Q. So that when you begin classifying name bands, it is the price scale that you fix for the playing of your music at any particular location?

A. Yes, sir.

Q. You will find others who will disagree with you as to what constitutes a name band, won't you?

A. As to what constitutes a name band?

Q. Yes. You take, for instance, Mr. Kenton; he was classed by you as a local man here, just a B name of a local band in Los Angeles.

A. Semi-name; yes, sir.

Q. Yes. And then he made the hurdle in New York City, and he then became a name band, didn't he?

A. Yes, sir.

Q. Just because he went from Los Angeles and was [219] recognized in New York; that was the fact, wasn't it? He went from one community into another community—

Mr. Christensen: Wait a minute.

Q. By Mr. Doherty: And the mere fact that he was recognized in New York, he was then classed as a name band by your organization?

A. Well, he was accepted by—yes; I—yes.

Mr. Doherty: That is all.

(Testimony of Larry Shea)

Re-Direct Examination

By Mr. Christensen:

Q. There was something else, wasn't there, besides just getting on a train and going to New York City?

A. Well, I think he inferred that fact, that he went to New York City, came about as a result of his popularity out here. There was a demand for him in New York City which a booking agency recognized, or he did, and brought him into New York City. He was a success in New York City.

Q. Why? Was there a demand, do you know, in New York?

A. Because of his popularity out here.

Q. And he is the man, you say, made all the records there, too?

A. He didn't make them there. He made them here, but his records have become extraordinarily popular, I would say, within the last 15 months.

Mr. Christensen: That is all, thank you. [220]

The Court: I think we will take our recess now, ladies and gentlemen, for a few minutes. Remember the admonition.

(Short recess.) [221]

Mr. Christensen: You Honor, I would like to recall Mr. Wonders to ask him a couple of questions which were just brought to my attention.

The Court: Very well.

Mr. Christensen: Mr. Wonders, will you please resume the stand?



## RALPH WONDERS,

recalled as a witness by and on behalf of the plaintiff, having been previously duly sworn, was examined and testified further as follows:

## Direct Examination

Mr. Christensen: Mr. Wonders, you have already been sworn, if you will just be seated.

The Court: Sit down, Mr. Wonders.

The Witness: Thank you.

By Mr. Christensen:

Q. During the recess there was brought to my attention a matter of an Artie Shaw incident, where he played out here, he was booked out at the Palladium, and you represented him. Or, did you represent him, do you know? I mean at the Palomar.

A. We did at that time. We don't at the present time.

Q. Now, at that time while he was booked there, he didn't play there, did he? Just tell us what happened on that [222] occasion.

A. Artie Shaw—

Mr. Doherty: Now, just a minute. Give us the date and the approximate time, please.

The Court: Just fix those dates, Mr. Wonders.

The Witness: Gosh, that is difficult.

Mr. Doherty: I didn't get that.

The Court: He said that he has some difficulty in fixing the specific dates. If you can get the dates, you might do that.

Q. By Mr. Christensen: The first time he came to the Coast?

A. I don't know, but it is practically five or six years ago. I would only be guessing. I can give you the exact date and the exact booking by getting the office or getting the contract out.

(Testimony of Ralph Wonders)

Mr. Doherty: I object on the ground it is too remote and without the issues of the case.

Mr. Christensen: It has only to do with the proposition that it isn't the man that stands up there, but various other items, your Honor.

The Court: There is nothing before the court.

Q. By Mr. Christensen: You recall, then, when he was brought to the Coast?

A. I booked him into the Palomar at 3rd and Vermont [223] before it burned down, and Mr. Shaw was taken sick on the train coming out. He opened on a Wednesday, and that night we took him off the bandstand to his home, and from there to the hospital, where he was for a period of four or five weeks. He was drawing capacity business in the Palomar, and while Mr. Shaw was in the hospital, on Wednesday, Thursday, Friday, Saturday and Sunday we put Tony Pastor, who is also the same instrumentalist, in front of the band, plays a clarinet. The business at that time did not drop off; in fact, they never missed Artie Shaw until Mr. Winchell on a Sunday night broadcast announced that Artie Shaw was in the hospital dying, and still the crowds continued to come and the band was paid its weekly salary, and when he came out of the hospital he returned to the bandstand.

Q. The condition was the same as if he had been there personally?

A. Yes, even so much so that the management told me nobody asked for refunds at all.

Mr. Christensen: That is all. Thank you.

(Testimony of Ralph Wonders)

Cross-Examination

By Mr. Doherty:

Q. Mr. Wonders, then what you are telling is that in some instances it is the musical organization that counts?

A. Well, I can clarify that situation by these remarks, that Mr. Shaw had been on the air, he had made a lot of records, [224] the public at large on the West Coast had never seen Artie Shaw, and it might be due to some fact, that they didn't even miss him because the boy in front was playing the same instrument that he played when he was there. Tony Pastor took his place, but even after it was announced on the air that Artie Shaw was in the hospital, the attendance did hold up.

Q. The Palomar at that time was the only large dance hall in Los Angeles?      A. Yes, sir.

Q. And at that time the population here in Los Angeles City was about a million and a half; is that right?

A. I imagine so. I don't know what the population was at that time. I have read articles in the newspapers that it was a million and a half population.

Q. And that was the old Palomar out at 3rd and Vermont which burned down?      A. Yes, sir.

Q. It was quite a popular place?

A. Very popular.

Q. A big attendance, and band after band there?

A. Well, certain bands drew more than others.

Q. Now, sometimes a very good band does not draw so well; you have found that?

A. In certain spots, yes, that can happen.

(Testimony Ralph Wonders)

Q. Sometimes there is other competition that will knock [225] it down? A. Yes, sir.

Q. And sometimes weather makes a difference?

A. The weather is a big element.

Q. And sometimes another attraction will affect it; is that right? A. Yes, sir.

Q. And sometimes you will have here on a Saturday a big football game where you get 100,000 going out to the Coliseum, and that night you may have a good night or a bad night at a ballroom?

A. That is generally a good night.

Q. Everybody is out on the loose that night?

A. Yes.

Q. But if the football game is up at Berkely or Stanford, and it is a big game where U. S. C. goes up there, the contrary is true? A. Not necessarily.

Q. It cuts it down, does it not?

A. Not necessarily.

Q. You don't think fifty or sixty thousand young people leaving here makes a difference in the attendance at local ballrooms?

A. I didn't know fifty or sixty thousand would leave the city. There are other schools here. There is U. C. L. A. [226]

Q. There is a dispute out at U. S. C. about that. Is that not true?

A. Well, I don't belong to either one, so I am neutral on that subject.

Mr. Doherty: That is all.

(Testimony of Ralph Wonders)

Re-Direct Examination

By Mr. Christensen:

Q. Now, there is a Casa Loma orchestra, isn't there?

A. Glen Gray and his Casa Loma orchestra, yes.

Q. Isn't it booked as the Casa Loma orchestra?

A. It was originally booked as the Casa Loma orchestra, but for the past eight years it has been called Glen Gray and his Casa Loma orchestra.

Q. That is even a corporation, isn't it? A. No.

Q. Was it? A. I think it was at one time.

Mr. Christensen: All right. Thank you.

(Witness excused.)

Mr. Christensen: Mr. Dave Dexter, please.

DAVE DEXTER, JR.,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please? [227]

The Witness: Dave Dexter, Jr.

By Mr. Christensen:

Q. Mr. Dexter, I hope you will keep your voice up, and maybe by example I will do so, too. I will try to make it the other way around. What is your business, occupation or profession, sir?

A. Oh, at the present time I am an editor of a music magazine.

Q. And the name of the magazine, sir?

A. It is called "Hollywood Note." It is not out on the stands yet.

(Testimony of Dave Dexter, Jr.)

Q. Prior to becoming an editor of that, what was your business or occupation?

A. Well, it has been in various capacities connected with music, for about—

Q. Well, you tell us your background in music?

A. Well, it runs about fifteen years, I suspect, as a saxophone player, and editor of various trade magazines.

Q. Will you name some of them? Just the trade magazines I am talking about.

A. Well, I edited "Down Beat" in both Chicago and New York for four years.

Q. Tell me what is "Down Beat," in addition to a trade magazine? There may be some of these ladies and gentlemen that are just as dumb as I am. [228]

A. "Down Beat" is a twice-monthly news magazine, devoted to music and musicians, and it is confined to the popular music field. It does not go into the classical scope of music at all. It is strictly dance bands, dance band musicians, singers, and the like. It is read throughout the world, as a matter of fact.

Q. How long were you editor of "Down Beat"?

A. I was one of the editors of "Down Beat" for about four years.

Q. And prior to that, sir?

A. Before that newspaper reporter, writing music news, night clubs, and I have served as manager of Sonny Dunham's orchestra. I have written radio shows for Jimmy Dorsey's orchestra on a coast-to-coast radio hook-up sponsored by the United States Navy, and I have also acted as one of the editors of a magazine known as "Music and Rhythm" in New York.



(Testimony of Dave Dexter, Jr.)

Q. Tell us about that.

A. That was a similar magazine to "Down Beat."

Q. Were you at any time connected with any records or record-making company?

A. Yes, from 1942 up until last August I was here in Hollywood with Capital Records, a regular phonograph manufacturing company.

Q. Have you been connected, then, with the band and entertainment business for how long, sir? [229]

A. Well, I should say from about 1930 up to the present.

Q. That is your whole work, is it?

A. Yes, that is my entire activity, you might say.

Q. Do you know whether there is such a thing as a name band? Does that mean anything to you?

A. Yes, there very definitely is such a thing as a name band.

Q. Will you tell us what it is?

A. But it is very hard to define, because it is hard to draw the line.

Q. In your own way, in your own words, tell us what it is.

A. A name band, I think, as based—the definition of a name band is based especially on its drawing power at the box office. That is what it is based on essentially, because unless a band can attract more customers, more money at the box office than just any other band, well, it doesn't step out, and cannot demand and receive more money for its services.

(Testimony of Dave Dexter, Jr.)

Q. What is it, if you know, that makes up a name band? What is it that goes to make a name band?

A. Well, I think there are many, many factors that make a name band.

Q. Tell me.

A. Well, there is almost an infinite number of factors. There are hundreds of them. [230]

Q. The major factors, will you tell us?

A. Well, No. 1 would be the leader himself. He must have a certain outstanding talent. He not only must have talent, but he must be—he must have a personality that endears him to other people. He gets along with people, and he can go out and hire the best musicians, and they are happy to work for him. He must have very shrewd management. He must also have very wise publicity and exploitation in order to make his name better known throughout the nation.

There are many, many factors that go into making a name band. Probably the most important at this date, 1946, is his activities in phonograph records. That wasn't true too many years ago, but today the record situation is such, the records are so popular with the masses of American people, and so many are sold that a band's best bet to become a big name band and command the absolute top money in theatres and ballrooms is through the medium of making records. Radio broadcasts also enter into it.

Q. Now, what do bands do in order to get this sort of publicity, records, and—well, let's confine it now to radio.

A. Well, there are so many different angles to it. You mean how does the band get on the radio?

(Testimony of Dave Dexter, Jr.)

Q. Yes. Well, now, let us put it this way: would a band try to select places where it could get on the radio? [231]

A. Of course, the band accepts its engagements through an agency, as we heard earlier today. The agency attempts, in selling the band to a ballroom or a night club man, to sell it to a ballroom or night club man who has the facilities of a coast-to-coast radio wire in his establishment.

Q. Is it true that they would even work for less to be on the air there?

A. I think it has been true in the past.

Q. Would it be true, then, that a name band would be one which a person on the street would recognize on hearing the name?

A. No. I wouldn't say that, because it depends upon the person on the street. The person on the street may have no interest whatsoever in music.

Q. Let us say a person that has some interest in music, then.

A. Well, I don't like—

Q. Well, let's put it in another way: Would it be some such comparable situation as a movie star?

A. Exactly.

Q. You say exactly?

A. Exactly, yes. The top band leaders draw just as much fan mail, and they are idolized just as much by the young people as the top motion picture stars and, of course, their incomes are comparable to the top motion picture stars' [232] incomes, too.

Mr. Christensen: Thank you. You may cross-examine.

The Court: Would it be comparable, say, to a baseball player such as Babe Ruth?

(Testimony of Dave Dexter, Jr.)

The Witness: I think in many ways they are similar.

The Court: Or a vaudeville actor or actress on one of the old circuits?

The Witness: Yes. Probably back in the old days they were probably idolized as the band leaders are today.

The Court: Cross-examine.

### Cross-Examination

By Mr. Doherty:

Q. Mr. Dexter, were you in the court room when Mr. Larry Shea testified?

A. I was for a few minutes while he testified?

Q. Were you here when he testified what name bands were, gave his definition of a name band?

A. Yes. I think so.

Q. And were you here when Mr. Ralph Wonders testified what a name band was?

A. Yes, I heard Mr. Wonders' testimony.

Q. And were you here when Mr. Zucca testified as to what name bands were?

A. No, I wasn't here then.

Q. Have you ever found any two people who could just [233] agree on what a name band is?

A. Yes, if you name a band.

Q. If you name a band? A. They will agree.

Q. But when you get down to naming the elements that would make a name band, have you ever found two people that agree with you or with some one else's definition of what a name band is?

A. I have never made an attempt to find out.

(Testimony of Dave Dexter, Jr.)

Q. Now, some band leaders, of course, don't know anything about music, is that right,—are not musicians?

A. Well, I wouldn't subscribe to that, no.

Q. Do you know a band leader named Guy Lombardo?

A. I know of Mr. Lombardo, yes.

Q. He is a name band, isn't he? A. Yes.

Q. Do you know whether or not he is a musician, knows anything about music,—has a professional knowledge of music, I mean?

A. He attempts to play the violin, or did for many years.

Q. He did what?

A. He attempts to play the violin, or did for many years.

Q. He attempted to play it. Do you know whether or [234] not George Olsen is a professional musician, has a professional knowledge of music?

A. I know very little about Mr. Olsen. He is not recognized as a great musician.

Q. What about Jan Garber? He is recognized, isn't he?

A. In some circles, I suspect. Mr. Garber is also known as a violinist.

Q. Is he known as a professional musician or as having a professional knowledge of music?

A. I would say at one time he was known as a musician. Not today.

Q. Now, were you active in music circles in high school?

A. About like any high school youngster, I imagine.

(Testimony of Dave Dexter, Jr.)

Q. How?

A. Just about like any high school youngster, I should say.

Q. When did you graduate from high school?

A. In 1931, I think it was.

Q. In 1931? A. Yes.

Q. And were you seventeen years of age at that time?

A. Well, I will have to figure it up.

Q. Tell us when you were born. [235]

A. 1915.

Q. 1915? A. Right.

Q. Then you were sixteen years of age?

A. Yes, sir.

Q. And during the last years, from the time you were sixteen years of age up to the present time you have devoted your life to a musical career, that is, as a professional editor, and so forth? A. I should say, yes.

Q. And did you go any further than high school?

A. Yes. That is why I hesitated a minute ago. I went to the University in order to further my studies, but during all the time I was in the University I concentrated on music and writing. I make no claim to being a musician, please understand. I am an editor.

Q. That is, you never studied music?

A. Yes, I have studied music.

Q. But you don't make any claim to being a professional musician?

A. No. I mean, my livelihood is writing and editing, not playing an instrument.

Q. You were speaking about these coast-to-coast broadcasts as one of the important factors in defining a name



(Testimony of Dave Dexter, Jr.)

band. Isn't it very important to know what hours the broadcasts take [236] place?

A. Well, for whom, the average listener?

Q. For the musician. Does it make any difference what hour of the night he broadcasts, as to whether or not the coast-to-coast broadcast amounts to anything?

A. Certainly. It varies according to whatever portion of the country he is in.

Q. In other words, there are a number of places in Southern California that broadcast coast-to-coast dance bands after 11:00 o'clock at night?

A. They broadcast, but most of the wires don't go coast-to-coast, because most of the stations in the East are closed.

Q. Some are open all night?

A. But very few will carry a sustained program that late at night, at 1:00 o'clock in the morning.

Q. But if you broadcast in Los Angeles at 11:00 o'clock, it is 2:00 o'clock in the morning in New York,—right? A. Right.

Q. So a coast-to-coast broadcast doesn't mean much unless you know the hour the broadcast takes place; isn't that true?

A. No. I really don't understand your question, Mr. Doherty.

Q. Well, Mr. Dexter, you stated that one of the elements of a person becoming a name band, or an organization becoming [237] a name band, was radio broadcasts coast-to-coast. A. Yes, sir.

(Testimony of Dave Dexter, Jr.)

Q. Isn't it an important factor to know the hours that the coast-to-coast broadcast takes place, in order to determine whether or not—

A. Yes, but those broadcasts can take place at any time from 12:00 o'clock noon until 12:00 o'clock midnight. You have a 12-hour span there. For instance, I like to know what hour Bob Hope is on on Tuesday nights, so that I won't miss his program. In other words, I don't quite understand. All broadcasts don't have to emanate from Hollywood at 11:00 o'clock at night. They can emanate at 5:00 or 6:00 o'clock in the afternoon just as easily as at midnight.

Q. I am not asking you that. I am asking you whether or not the hour of the broadcast is not also an element?

A. Yes, it is an element.

Q. Now, we will take the matter of recordings. You say that is very important. Sometimes a band leader overnight becomes popular because he makes a recording that catches; isn't that right? A. Right.

Q. And then if that is the last one he makes, he fades about as quickly as he was made, doesn't he?

A. Yes, if he doesn't make any more, his position is in jeopardy. [238]

Q. In other words, he has to make more than one hit, he must keep on producing at reasonable periods additional records; is that right?

(Testimony of Dave Dexter, Jr.)

A. Yes, but there have been exceptions to it.

Q. There may be exceptions, but the general rule is that one record standing alone will not necessarily sustain a band leader over an indefinite period? A. True.

Q. And he must keep on producing? A. True.

Q. Now, the drawing power at the box office. You never check that, do you? You don't know how much these band leaders draw at any specific place, do you?

A. I have a pretty good idea, yes.

Q. Have you ever checked the matter personally?

A. In the past I have had occasion to, yes, when I was reporting certain news stories that dealt with the box office draw of attractions.

Q. Well, haven't you found instances where band leaders are pretty well known in one locality, and they go into another locality and are complete flops?

A. That has happened, yes. Again, it depends on his records, his air time, his management, the weather. Many, many factors determine it.

Q. As you said, there may be a hundred different factors [239] involved? A. Yes.

Mr. Doherty: That is all.

Mr. Christensen: That is all. Thank you very much.  
(Witness excused.)

Miss Katleman, please.

ISABEL KATLEMAN,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please?

The Witness: Isabel Katleman, K-a-t-l-e-m-a-n.

The Court: And is it Miss or Mrs.?

The Witness: Mrs.

By Mr. Christensen:

Q. Your business, profession or occupation is what?

A. I am a secretary at Frederick Brothers Agency.

Q. And Frederick Brothers Agency is what?

A. It is an artists' agency similar to those which have been under discussion during this trial.

Q. Such as Music Corporation of America,—

A. Yes, sir.

Q. —and General Amusement Corporation?

A. Yes.

Q. In your capacity as secretary, will you tell me your [240] specific duties there?

A. Well, I am secretary to two men, Mr. Billy McDonald of the orchestra department, and Mr. Tom Kettering of the acts department. In that capacity I take care of their telephone calls, and correspondence, and just general office routine.

Q. Well, do you also do some booking?

A. Not with this office, no. I have been there a very short time.

Q. How long have you been there?

A. Since the first of November, of 1945.

(Testimony of Isabel Katleman)

Q. Prior to that time where were you employed?

A. With the William Morris Agency in Beverly Hills.

Q. Now, the William Morris Agency is another agency similar to those under discussion; is that right?

A. Yes.

Q. As a matter of fact, that about exhausts them, does it not, the William Morris Agency, the Fredericks Brothers Agency, the General Amusement Corporation and the Music Corporation of America?

A. Well, those are the only large ones. There are numerous small, independent agencies.

Q. At the William Morris Agency, what were your duties there?

A. Well, I was fundamentally the same, except I had a [241] little more responsibility, having been there a longer period of time in the orchestra department.

Q. Will you explain your duties? Just explain what your duties were while you were at the William Morris Agency?

A. Well, I was secretary to three different men during their period of tenure there, the last being Charles Wick, who now holds the position as head of the band department, and I did practically the same thing, office routine pertaining to orchestras.

Q. While there did you book any bands?

A. Yes, I did.

Q. Frequently?

A. Well, it depended. Jack Flynn, who had the position before Mr. Wick, was out of the city a great deal, during which time I would handle his affairs, and I also assisted Mr. Wick, because he was unfamiliar with the territory when he took over the job.

(Testimony of Isabel Katleman)

Q. So that you would carry on the activities during Mr. Flynn's absence— A. Yes.

Q. —and book bands; is that right? A. Yes.

Q. Will you tell me how those bookings were handled?

A. You mean the general procedure in booking an orchestra? [242]

Q. That is right. Just briefly tell us how.

A. Are you interested in one-nighters or locations? They vary somewhat.

Q. Tell me about those.

A. In one-nighters, when you know a band is coming into the territory, you send out a series of form letters to ascertain the interest of the various promoters in your territory. You then get that particular interest and send out telegrams with definite dates, and follow through with a telephone call to the promoter, as a general rule, and if a booking is consummated, telegrams are sent by the promoter and by the booking agency, and the contracts are issued and signed.

Q. Do all those letters and telephone calls go only to places here in California?

A. No, they cover our entire territory; about seven western states, I believe, roughly.

Q. Before working for the William Morris Agency, by whom were you employed?

A. Music Corporation of America, in Beverly Hills and San Francisco.

Q. That is the defendant in this action, the Music Corporation of America? A. Yes.

Q. What was your position with the Music Corporation of America? [243]

A. I was secretary to Ames Bishop.



## (Testimony of Isabel Katleman)

Q. Now, will you fix the time during which you were so employed?

A. From July, 1941 until January, 1943.

Q. During the time that you were there, did you have any conversation with Mr. Bishop concerning a contract with Wayne Daillard?

A. Well, Yes.

Q. Tell me what that was.

A. Oh, possibly three or four months after I had commenced working there and was learning the music business we discussed the fact that M. C. A. was booking the Pacific Square Ballroom.

Q. By "we" you mean you and Mr. Bishop?

A. Mr. Bishop and I were.

Q. That is one of the defendants here?

A. Yes.

Q. Tell me what was said.

A. Something to the effect that there was an exclusive booking arrangement with Pacific Square, and I had been reading the by-laws of the American Federation of Musicians to familiarize myself with the business. I knew nothing about it, and I had recalled a phrase stipulating that no agent could book exclusively. And he said or intimated—

Q. Who said? [244]

A. Mr. Bishop intimated there were—

Mr. Doherty: Just a minute.

By Mr. Christensen:

Q. Instead of intimated, what did he say or do?

A. I am sorry. He sort of smiled and said, "Well, there are ways of getting around that" to be exact.

(Testimony of Isabel Katleman)

Q. That is the Wayne Daillard contract with Music Corporation of America that he was discussing?

A. Yes.

Q. You know Mr. Finley, don't you? A. I do.

Q. How long have you known him?

A. I have known him personally a little over a year. I have known him by reputation for about five years.

Q. Have you been down to the Mission Beach Ballroom?

A. Yes, I was there the week-end when they opened last February.

Q. You also have been down to the Trianon Ballroom, I believe? A. Yes, I have seen it.

Q. While you were at the William Morris Agency, did you have occasion to write a letter for Mr. Finley?

A. Yes, I did.

Q. That was to the City Council of the City of San Diego, was it?

A. No, it was a letter to Mr. Finley. [245]

Q. Concerning the booking; is that right?

A. Concerning orchestras which we had available.

Q. And what was the letter?

A. You mean, what it contained, or the circumstances under which it was written?

Q. Well, both. Tell us.

A. Well, Mr. Finley called the office, and spoke with me, said that he was attempting to get the lease for the Mission Beach Ballroom, and to do so he would have to prove he was able to get attractions. He wanted to know if we would furnish him with a letter giving

(Testimony of Isabel Katleman)

a list of our orchestras so that he could submit it to the City Council, to enable him to get the lease.

Q. You did that?

A. Yes, I did. I wrote the letter, signing Jack Flynn's name, and when he came in he approved the letter and signed it himself.

Q. After you had written and sent or given this letter to Mr. Finley, did you then hear from the defendants, or any of them?

A. Yes, sometime afterwards they called Mr. Flynn.

Q. Who called? A. Mr. Bishop.

Q. You know Mr. Bishop's voice, of course?

A. Yes, over a period of almost five years.

Q. And did you hear the conversation?

A. Yes. I listened in on all of Mr. Flynn's telephone calls because he was away from the office a great deal, and I had to familiarize myself with what was going on, and he told us at that time that—

Q. Who?

A. Mr. Bishop. I am sorry. He informed us that Mr. Finley had not obtained the lease for Mission Beach, and would we please write a letter to Mr. Dailard retracting our original letter to Mr. Finley, saying we would continue to do business with Pacific Square through Mr. Bishop, and Mr. Flynn refused to do this?

Q. What did he say?

A. He said, "I intend to do business with whomever I can in San Diego. We don't like the situation which has existed there of splitting commissions," and he refused to write the letter. That was all.

(Testimony of Isabel Katleman)

Q. Now, while you were with Music Corporation of America, will you tell us if the system of booking bands was the same as you have already described?

A. You mean the letters and telegrams, and so forth?

Q. Yes.

A. Yes, all the offices follow the same procedure, to a great extent. M. C. A. does it on a greater scale because they have more attractions, but it is primarily and fundamentally [247] identical everywhere.

Q. Tell me about a contract. For example, let's start off with, say, there is a band in the East that is coming out west. Where does the territory of the Beverly Hills office begin? A. Oh, about—

The Court: Of which organization?

Mr. Christensen: The Music Corporation of America.

The Witness: Oh, for them, I believe that they cover Denver west.

Q. By Mr. Christensen: I beg your pardon?

A. Denver west.

Q. Now, then, let's take a band that is, let us say, arbitrarily and for the purpose of illustration, assume the band is in Chicago and coming west, and let us say going northwest. Now, tell us just how that is handled.

A. Oh, you would telephone or wire your one-night booker in Denver and set up a day there, or a week if the place is large enough and can afford the band, and then take it up into Salt Lake, Butte, Seattle, into Canada, if necessary, and on down the Coast.

(Testimony of Isabel Katleman)

Q. How do you go about making these agreements? Is it all by telephone?

A. A great deal of it is. Your telephonic confirmation is not binding, so it must be by wire. [248]

Q. So you send them a telegram; is that right?

A. Yes.

Q. At M. C. A. they also have a teletype?

A. They did not at that time. They may now. I don't know.

A. And how are the contracts gotten to the orchestra and to the ballroom operator, and how is that handled? A. By mail.

Q. How about remittances? Do they come in by mail, or what?

A. By mail generally, or if the time is short and they want a deposit, it may be telegraphed, although that is not very usual.

Q. You were engaged in this business while Mr. Daillard had the Pacific Square Ballroom, were you not? A. Yes.

Q. And did the William Morris Agency book some bands in there? A. Yes; yes.

Q. What was done in order to do that?

A. Mr. Flynn or Mr. Wick, as the case may be, would call Mr. Bishop and say, "I have, oh, Henry Busse or Vaughn Monroe available on the 8th of January. Is there a spot down in San Diego?"

And Mr. Bishop would say, "I will pencil it in, and let [249] you know." Then they would talk money, and the greater part of the time it was confirmed. However, commissions had to be split, and our own contracts

(Testimony of Isabel Katleman)

were issued and sent over to Mr. Bishop, who sent them to Mr. Daillard. Mr. Daillard sent them back to Mr. Bishop, and he sent them to us. [250]

Q. So that, in order to book a band into any place that was run by Daillard, it was necessary to go through Bishop, is that right? A. Yes.

Mr. Doherty: Just a minute now. That calls for the conclusion of the witness and argumentative and hearsay.

The Court: Yes, that is a leading question. Don't lead your witness.

Mr. Christensen: Well, let me reframe it.

Q. In order to book one of William Morris Bros.' bands into either the Pacific Square ballroom or—let's limit it to that—what was necessary to be done?

A. To consummate the booking through Mr. Bishop.

Q. And did you say something about splitting commissions, too? A. Yes.

Mr. Christensen: All right; thank you. You may examine, Mr. Doherty.

#### Cross-Examination

By Mr. Doherty:

Q. When did you go to work for Music Corporation of America, in 1941? A. Yes.

Q. You worked for them about 18 months?

A. Approximately. [251]

Q. And you are Mr. Bishop's secretary?

A. I was.

Q. You were? A. Yes.

Q. And then you went to the William Morris Agency?

A. There was about a six months' hiatus there.



(Testimony of Isabel Katleman)

Q. Pardon me?

A. There was about a six months' hiatus there. I was in San Francisco and I returned to Los Angeles in June of 1943, at which time I went to William Morris'.

Q. You are an experienced booker of bands, aren't you?

A. Yes. I know the agency band booking business thoroughly.

Q. Yes. And, of course, you know what name bands are? A. Yes; I do.

Mr. Doherty: I show you, counsel, a photostat copy of a letter, a photostat of an original which is part of a deposition.

Mr. Christensen: I have seen it, Mr. Doherty. Thank you for having shown it to me.

Mr. Doherty: May that be stipulated that is a photostat of the original?

Mr. Christensen: Oh, yes; certainly.

Q. By Mr. Doherty: I will show you, young lady, a letter dated September 13, 1944, addressed to Mr. Larry Finley [252] at San Diego, signed by "Jack Flynn." It is on the stationery of the William Morris Agency. Is that the letter that you wrote?

A. Yes. It has my initials on it.

Q. And this is the letter that Mr. Jack Flynn signed after you had prepared it for him?

A. Yes. He came into the office; I told him of the phone call, showed him the letter and he signed it.

Q. In that letter, the list of bands, name bands of William Morris Agency, the William Morris Agency had

(Testimony of Isabel Katleman)

more bands than that, of course, under contract, didn't they?

Mr. Christensen: Just a moment, please.

A. Many more.

Mr. Christensen: To which we object as assuming a fact not in evidence. The letter says:

"A partial list of our attractions," not of bands.

Mr. Doherty: Well, I will introduce the letter, first, and I can examine the witness on it more intelligently. Any objection to introducing this as Exhibit C?

Mr. Christensen: No, Mr. Doherty; I have none.

The Court: So ordered.

(The letter referred to was marked as Defendants' Exhibit C, and was received in evidence.)

Mr. Doherty: May I read it to the jury, your Honor? [253]

This is a letter on the letterhead of the William Morris Agency, 202 N. Canon Drive, Beverly Hills, California, dated September 13, 1944.

"Mr. Larry Finley

"718 Bank of America Building

"San Diego, California

"Dear Mr. Finley:

"Pursuant to our telephone conversation of today, if you complete your plans to take over the Mission Beach Ballroom in San Diego, we should be happy to arrange our various name bands for appearances with you when they are available in this territory.

## (Testimony of Isabel Katleman)

"A partial list of our attractions include:

"Georgie Auld	Neil Bondshu	Henry Busse
"Count Basie	Del Courtney	Al Donahue
"Al D'Artega	Billy Eckstine	Earl Hines
"Duke Ellington	Enric Madriguera	Hal McIntyre
"Vaughn Monroe	Ozzie Nelson	Boyd Raeburn
"Carl Ravazza	Artie Shaw	Freddie Slack

"Paul Whiteman

"I'd appreciate your calling me when you are in Los Angeles so we can discuss your policy further and at that time I can possibly give you tentative dates when the above orchestras will be available.

"Cordially,

"(Signed) Jack Flynn

"William Morris Agency, Inc." [254]

Q. Now, young lady, look that list over and tell me the names on there that are so-called attractions and not bands. A. Those are all orchestras.

Q. Those are all orchestras? A. That is right.

Q. But the William Morris Agency has more than that under contract, has it not?

A. Yes; many more.

Q. Many more? A. Yes.

Q. But this was all that was available, coming on the Coast about that time, is that it?

A. No. Those were the name bands on the available list of attractions.

Q. That were coming out here?

A. Not necessarily, no. It was the complete list of name bands.

(Testimony of Isabel Katleman)

Q. This is not a complete list?

A. This is not a complete list of orchestras whom they have under authorization; no.

Q. Were you in the room here, in the courtroom, when a couple of gentlemen testified, Mr. Larry Shea and Mr. Ralph Wonders, about what were and what were not name bands? A. I was. [255]

Q. What? A. Yes.

Q. You are an expert on that, aren't you?

A. I do not believe I rank with them, but I have my own ideas on name bands, and they are conclusively the same as everyone else has said.

Q. Young lady, you think, don't you, in the same places?

A. No. Any name band is that which is known nationally.

Q. You heard them say that Boyd Raeburn was not a name band, didn't you? A. I did.

Q. And you find on this list that you represent Boyd Raeburn was a name band?

A. Boyd Raeburn, Mr. Doherty, was William Morris attraction and we had to call him a name band.

Q. You would not deliberately misrepresent anything to Mr. Finley, would you?

A. Well, we still have hopes that he may be. He is a name band—I would like to amend that—to a certain group of young people who like him tremendously; but he has yet to attain nation-wide recognition.

(Testimony of Isabel Katleman)

Q. Then, you have another qualification on name bands; you have a name band for the young folks, some for the middle-aged, and some for the old, do you?

A. No. No, I was just amending that in the case of [256] Mr. Raeburn.

Q. How many conversations a day would Mr. Bishop have on the—or, rather, Mr. Flynn have on the telephone?

A. Oh, that is very hard to say; possibly 25, 30, 35.

Q. And you listened in to all the conversations?

A. I did unless they were personal.

Q. Every conversation that he had you would listen in on? A. Yes.

Q. Unless they were personal? A. That's right.

Q. Was he in a different room from you?

A. No; we shared an office.

Q. The same office? A. Yes, sir.

Q. How far was he seated from you?

A. About the same distance as you and I.

Q. And that is about a distance of 10 to 15 feet?

A. Approximately.

Q. How could you tell the conversation was going to be personal so that you might not listen in?

A. Well, all calls came through me. I answered the telephone, and if it was a personal call I would not listen. I knew who was calling, who was a personal friend and who was a business acquaintance. [257]

Q. And you listened in on this conversation of Mr. Bishop from San Diego to Mr. Flynn?

A. Mr. Bishop was calling from Beverly Hills, from his office.

(Testimony of Isabel Katleman)

Q. Calling from Beverly Hills? A. Yes.

Q. You were also in Beverly Hills, were you not?

A. Yes.

Q. Did you make any note of that conversation at the time?

A. No; I never made notes of conversations. I listened so that I would be apprised of what had happened.

Q. You had conversations, then, of 20 or 25 a day that you would listen in, which would be an average of, say, 100 a week, and you now remember that back in 1941 a certain conversation took place and in 1944 another conversation took place?

A. Those were peculiar incidents which caused me to remember them.

Q. Just a peculiar incident. How did you come to relate the substance of this conversation to Mr. Finley?

A. I don't understand.

Q. This conversation now you are testifying about that Mr. Ames Bishop had on the telephone with Mr. Flynn, how did you come to relate that conversation to Mr. Finley? [258]

A. Oh, I called Mr. Finley and I said I was sorry to hear he had not gotten the lease. And then Mr. Flynn got on the telephone and said—he also repeated that he was sorry, because we were both very fond of Mr. Finley—pardon me—and we were hoping that he would be successful. He seemed to want to go into business in San Diego on a larger scale, and he seemed to be exceedingly surprised, and said, “No, the trial doesn't come up until next week, or the hearing, whatever it was.”



(Testimony of Isabel Katleman)

Q. Didn't Mr. Bishop say to you on the telephone that he wanted Mr. Flynn to write a letter to San Diego in behalf of Mr. Daillard so Mr. Daillard would get the lease?      A. He did.

Q. Well, you knew from that conversation that the lease had not been awarded?      A. No.

Q. That Mr. Daillard was trying to get it?

A. I am sorry, Mr. Doherty. Mr. Bishop led us to believe that the hearing had been held a week previous to what we had expected, and that Mr. Finley had been refused the lease and Mr. Daillard had it, and therefore we should endeavor to get back into Mr. Daillard's good graces.

Q. Well, the letter was to be written to the City Council, wasn't it?

A. No; there was never a letter written to the City [259] Council.

Q. No. But Mr. Bishop asked a letter be written to the City Council on behalf of Mr. Daillard?

A. I don't recall it as such. He wanted the letter written to Mr. Daillard. That was my impression.

Q. You mean commending Mr. Daillard as a desirable lessee for the Mission Beach?

A. No; more retracting a letter which had been written, with the thought shown that we shall give you our business in the future, as we have done in the past.

Q. You have no very definite recollection of it, have you?

A. Not too definite; merly the sum and substance of the conversation. I couldn't repeat it word for word.

(Testimony of Isabel Katleman)

Q. And Mr. Finley has helped to refresh your recollection; he told you what he remembered you saying?

A. No; he has not.

Q. You have not talked with Mr. Finley in the last two or three weeks? A. I have seen him, yes.

Q. You have not talked to him about the testimony you were to give here? A. No; I have not.

Q. You have not talked with his attorneys?

A. No. [260]

Q. You mean you have not talked with any of the attorneys for Mr. Finley before coming to this courtroom during the past two or three weeks?

A. I have spoken with them. I passed the time of day with them; yes.

Q. And they did not know what you were going to testify to until you came here on the stand?

A. They did not, to my knowledge.

Q. Isn't it a fact that you gave a statement and it was taken down in shorthand, which counsel read from right here in your presence?

Mr. Christensen: Do you want to see it, Mr. Doherty? It is some hieroglyphics that I made here, if you really want to see it.

Mr. Doherty: I don't want to see it.

Mr. Christensen: Why don't you, instead of asking her?

The Court: Never mind, now. I don't want that between two counsel.

The Witness: I don't know what you mean about the stenographic report.

(Testimony of Isabel Katleman)

Q. By Mr. Doherty: Who did you talk to about what you were going to testify to here today, before you came to this courtroom? A. No one.

Q. No one? [261] A. No.

Q. And the questions that this fine gentleman, Mr. Christensen, asked of you were without going over the matter with you as to what the answers were going to be?

A. Mr. Christensen and I have not discussed anything that we have talked about here on the stand.

Q. Or Mr. Finley? A. No.

Q. Or any other attorney representing Mr. Finley?

A. No, sir.

Q. Or any other person representing Mr. Finley?

A. No, sir.

Q. You have had no such talk with anybody?

A. I have not.

Mr. Doherty: That is all. I might submit another piece of evidence here, your Honor, and clean up some of this evidence here.

Mr. Christensen: I have not seen this. Will you give me just a minute, please?

Mr. Doherty: That is Fredericks Bros.

Mr. Christensen: If she knows anything about it, I have no objection.

Q. By Mr. Doherty: I will show you a letter on Frederick Bros. Agency stationery, dated September 14, 1944, and ask you if you recognize that signature? [262]

A. That is Billy McDonald's signature; yes.

(Testimony of Isabel Katleman)

Q. Yes. And did you ever see that letter?

A. No. I was not working for that office at that time and I have not gone through their files; so I am not familiar with that.

Dr. Doherty: May it be stipulated that this is the letter Frederick Bros. Agency wrote Mr. Finley in September, 1944?

Mr. Christensen: Will you hold it until tomorrow morning? We are about to adjourn. I did not read it very carefully. Will you do that for me, please? You might mark it for identification.

Mr. Doherty: Mark it Defendants' Exhibit D for identification.

(The letter referred to was marked as Defendants' Exhibit D, for identification.)

Do you wish to adjourn now, your Honor.

The Court: Yes; I think so.

Mr. Doherty: Will you have the witness return, then, tomorrow morning?

The Court: Return in the morning.

The Witness: Yes, sir.

The Court: Ladies and gentlemen, we will take a recess until ten o'clock tomorrow morning. Remember the admonition and keep its terms inviolate. Be here at ten o'clock in the [263] morning.

(Whereupon, an adjournment was had until 10:00 o'clock a. m., Thursday, January 31, 1946.) [264]

Los Angeles, California, Thursday, January 31, 1946.  
10 A. M.

The Court: All present. Proceed.

Mr. Doherty: I think this young lady was on the stand.

ISABEL KATLEMAN,

called as a witness by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued)

Mr. Doherty: If the court please, just as we recessed last night I had shown to counsel a document which we have had marked Defendants' Exhibit D for identification. This morning I showed it to counsel. What is your pleasure about it?

Mr. Christenson: I have no objection.

Mr. Doherty: It may be introduced?

Mr. Christensen: Yes.

Mr. Doherty: May we introduce it, then, as Defendants' D?

The Court: So ordered.

(The document referred to was marked as Defendants' Exhibit D, for identification.)

Mr. Doherty: May I read it to the jury, your Honor?

The Court: Yes.

(Testimony of Isabel Katleman)

Mr. Doherty: This is the letter I referred to yesterday, just as we adjourned. It is on the stationery of Frederick Bros. Agency, Hollywood, 8564 Sunset Boulevard, dated [266] September 14, 1944.

“Mr. Larry Finley  
#718 Bank of America Bldg.  
San Diego, California

“Dear Larry:

“As per our recent phone conversation wherein you stated that there was a possibility of your leasing the Mission Beach Ballroom, I am herewith listing some of our attractions that would be available for your use in the near future. I would like to say and remind you again that should this happen we can supply you some of the greatest name attractions in America today and naturally, we would like to do it on an exclusive basis and by our having your place exclusively, you could be assured of nothing but the finest talent in the business.

“The following is a list of the orchestras that would be available for your place:

“Lawrence Welk and His Champagne Music;

Ina Rae Hutton and Her Famous Orchestra:

George Paxton, 23 piece band breaking records  
Roseland Ballroom, New York;

Milt Britton, world's greatest comedy and dance band;

Ray Herbeck and His Columbia Recording Romance  
and Rhythm Orchestra;

Ada Leonard and Her All American 18 Piece Great  
[267] Orchestra.



(Testimony of Isabel Katleman)

Tommy Reynolds, America's Young 'Swing King';

Anson Weeks, famous 'Let's Go Dancin' With Anson' Orchestra;

Carlos Molina, just closed sensational 16 week engagement Palace Hotel San Francisco;

Col. Manny Prager, ten years on Ben Bernie's show;

Don Reid Orchestra, now in 9th month at Trianon Ballroom, Chicago;

Pinky Tomlin Orchestra;

Phil Levant Orchestra;

Billy Bishop, now Aragon Ballroom, Chicago.

"Also we have in colored bands:

Fletcher Henderson's World Famous Orchestra;

Ernie Fields' Okey Recording Orchestra;

The 18 International Sweethearts of Rhythm.

"The foregoing is a partial list of some of our larger names and when the time comes, I can give you many more to choose from.

"Also, I am listing a few of the names that will be available to you:

"Willie Howard

Rufe Davis

Ella Mae More

Belita

Bonnie Baker

The Condos Brothers

Fifi D'Orsay

Judy Starr

Dorothy Donegan

Ida James

"Larry, I hope the above list which is only a partial [268] list of the artists we represent exclusively, will supply the information you need. You, of course,

(Testimony of Isabel Katleman)

realize we are one of the four largest agencies in the business today and the above is only a partial list of the attractions we can offer you when the time warrants.

"I am looking forward to seeing you again in the very near future and I hope and know as always your business venture will be a great success.

"If there is any added information you need as to our available talent, please do not hesitate to call upon me as it would be a pleasure to be of service to you.

"Sincerely, Billy"

and typed, "Billy McDonald, Frederick Bros. Agency, Inc."

Postscript: "We also have innumerable screen stars under contract to us. I can supply this list at your request."

Initialed, "BM" in typewriting.

By Mr. Doherty:

Q. Miss Katleman, yesterday, according to my recollection, you related a conversation that you overheard or had with Mr. Bishop while you were his secretary at M. C. A., respecting a contract that M. C. A. had with Mr. Daillard at San Diego; is that correct? [269]

A. Yes.

Q. When did that conversation take place?

A. I believe it was sometime in the fall of 1941. September or October, along in there. I am not positive.

(Testimony of Isabel Katleman)

Q. Was it possibly as late as November or December, 1941, or would you think it would be earlier than that?

A. I don't know, to be exact. I know it was in the fall, it was cold. It was a very cloudy day, I recall that.

Q. You never gave it any thought?

A. Not the date, no. The conversation remained in my mind, that was all.

Q. Did you make any note or memorandum of the conversation?      A. No.

Q. And at that time did you have before you the rules and regulations of the Musicians Union?

A. Not before me. They were available in the office.

Q. Quite a thick volume, are they not?      A. Yes.

Q. Probably a hundred pages or more of reasonably fine print?

A. I don't know the number of pages, but it is a small booklet, and it is very fine print.

Q. You had been studying that before?

A. I had looked at it, yes. [270]

Q. You had not made any effort to study it?

A. Not particularly. I wanted to know the type of business I was in because it was all foreign to me at the time, and I wanted to know more about the Musicians Union.

Q. Would you say the conversation took place in September, October, November or December, 1941? Now, give your best recollection.

A. I couldn't answer that, Mr. Doherty. I am sorry. I know it was in one of those four months, I am reasonably certain, but I couldn't say definitely which of the four.

(Testimony of Isabel Katleman)

Q. It could have taken place in any of those months?

A. Yes.

Q. How did the conversation happen to come up?

A. I believe Mr. Bishop said something to the effect of having entered into a contract with Mr. Daillard, and he was quite pleased at the fact that he had this account, which was quite remunerative for the office.

Q. Mr. Bishop was a salesman for M. C. A.?

A. Yes.

Q. And that was an account that he serviced?

A. That's right.

Q. You were at that time his confidential secretary?

A. I was.

Q. And you were just having, you might say, a discussion in a friendly way about business in the office?

A. That's right. [271]

Q. And he said something about the contract?

A. Yes.

Q. You had not seen the contract?

A. I might have seen it but I had never read it.

Q. And in what form was the contract, do you remember?

A. It was a letter.

Q. How is that?

A. It was a letter, as I recall, a letter of agreement to Mr. Daillard.

Q. Have you seen a copy of that since?

A. No; I have not.

Q. And who was the letter from or to?

A. It was to Mr. Daillard from Mr. Bishop.

(Testimony of Isabel Katleman)

Q. How is that?

A. To Mr. Daillard from Mr. Bishop, I think. I am not certain.

Q. Did Mr. Bishop sign it alone or did someone else sign it?

A. I don't know. I did not type it, so I consequently had very little to do with it.

Q. That was not your department, was it?

A. No, evidently not. I don't know who drew it up.

Q. Last evening, I asked you among other things this question or series of questions. I am reading from page 260 of the transcript, Mr. Reporter, beginning at line 15; and I [272] am asking the questions and you are answering.

“Q. And Mr. Finley has helped to refresh your recollection; he told you what he remembered you saying?

“A. No; he has not.

“Q. You have not talked with Mr. Finley in the last two or three weeks?

“A. I have seen him, yes.

“Q. You have not talked to him about the testimony you were to give here?

“A. No; I have not.

“Q. You have not talked with his attorneys?

“A. No.”

Page 261, beginning at line 1

“Q. You mean you have not talked with any of the attorneys for Mr. Finley before coming to this courtroom during the past two or three weeks?

“A. I have spoken with them. I passed the time of day with them; yes.

(Testimony of Isabel Katleman)

"Q. And they did not know what you were going to testify to until you came here on the stand?

"A. They did not, to my knowledge.

"Q. Isn't it a fact that you gave a statement and it was taken down in shorthand, which counsel read from right here in your presence?"

Then a discussion between Mr. Christensen and me and [273] his Honor.

"The Witness: I don't know what you mean about the stenographic report.

"Q. By Mr. Doherty: Who did you talk to about what you were going to testify to here today, before you came to this courtroom?

"A. No one.

"Q. No one?

"A. No.

"Q. And the questions that this fine gentleman, Mr. Christensen, asked of you were without going over the matter with you as to what the answers were going to be?

"A. Mr. Christensen and I have not discussed anything that we have talked about here on the stand.

"Q. Or Mr. Finley?

"A. No.

"Q. Or any other attorney representing Mr. Finley?

"A. No, sir.

"Q. Or any other person representing Mr. Finley?

"A. No, sir.

"Q. You have had no such talk with anybody?

"A. I have not."

Do you wish to let that testimony remain as it is? [274]

A. Yes, sir.



(Testimony of Isabel Katleman)

Q. And you have had no such conversation with anybody?

A. I have not discussed the trial with Mr. Finley or his attorneys, as I told you.

Q. You know a young lady named Miss Janice Halpern, do you not?      A. I do.

Q. Who is she?

A. She is Lew Wasserman's secretary at M. C. A.

Q. And when did you see her recently?

A. One day last week. I do not recall the exact day.

Q. What day last week?

A. Thursday or Friday. I am not certain. We had luncheon.

Q. And where did you have lunch?

A. At Sherman's in Beverly Hills.

Q. At whose suggestion or invitation did you go there?

A. Well, we have been friends for a number of years, and whenever I am going over to Beverly Hills, if it is convenient, we meet for lunch.

Q. And you went to her office?

A. I picked her up outside the office; yes.

Q. And then you went to lunch together?

A. Yes.

Q. Who went to lunch with you other than Miss Halpern? [275]      A. No one.

Q. Just the two of you?      A. That is right.

Q. Did you have any conversation with her there?

A. Well, naturally.

Q. You did talk, didn't you?      A. Yes.

(Testimony of Isabel Katleman)

Q. And you were sitting at the table, discussing various matters, and you told her, did you not, that you had been subpoenaed in this case? A. I did.

Q. And you showed her a subpoena in this case?

A. I did.

Q. And did you not at that time say that sometime before that Mr. Finley had talked to you about this case?

A. I told her that Mr. Finley had told me I was going to be subpoenaed; yes.

Q. Yes.

A. But nothing in fact—

Q. Then you had talked with Mr. Finley?

A. He had asked me if I would testify, when he knew he was going to trial, and I said, "Yes, I would," but that was all.

Q. And you and this young lady, Miss Halpern, did discuss this case at the luncheon? [276]

A. Just that far; that is all we said.

Q. Didn't you say to her that you trusted that would not break up your friendship and hers with each other because you were going to testify in this case?

A. I said it in a kidding way, Mr. Doherty, because Miss Halpern is very fond of the office for which she works, and jokingly, I said, "I hope that this will not come between our beautiful friendship." That was all. And she left and said, "Well, of course not."

Q. Didn't she say it didn't matter to her what happened? That it had nothing to do with your friendship?

A. Possibly she did.

Q. And didn't you say to her then, in words and substance, as follows: That two fellows, leg men you

(Testimony of Isabel Katleman)

called them, from the attorney's office had been up to see you the day before; had taken you to lunch and asked you to testify in the case and subpoenaed you?

A. They asked me if I would testify. They repeated what Mr. Finley had said. I am sure I didn't call them "leg men" because that is not a phrase which is familiar to me or habitual.

Q. Did you go to lunch with them?

A. Yes, I did; we went to luncheon.

Q. And who were these gentlemen?

A. Mr. Jaffee and Mr. Karp. [277]

Q. This gentleman here?

A. Yes, and the gentleman behind Mr. Finley.

Q. And who else went with you to lunch?

A. No one.

Q. Just the two of you? A. Yes.

Q. How long were you at lunch?

A. An hour, as I always am.

Q. And during the conversation, there was nothing said about the present case and what you were going to testify to?

A. No. They told me I was going to be subpoenaed, and I would presume, so that I would have my affairs in order at my office. But no mention was made of any testimony I was to bring up or anything of that sort.

Q. They gave you, did they not, a subpoena at that time? A. No; they did not.

Q. They did not give you the subpoena there?

A. No.

Q. And so, when this fine young gentleman here that you have just mentioned sat and talked with you last

(Testimony of Isabel Katleman)

Thursday for one hour at lunch, nothing was said by him to you or by you to him as to what you knew about this case?

A. I do not recall exactly. We were sitting at the Town and Country Market, and a man whom I knew walked up and we called him over to the table, and he sat with us all the [278] time that we were eating luncheon and he more or less monopolized the conversation, consequently we had very little to say.

Q. Yes?

A. And we ate our luncheon and they went back.

Q. Was not the question asked you, in substance and effect, something respecting what you were to say about Mr. Ames Bishop, one of the defendants in this case, and that you said he had been wonderful to you; that you had worked for him and he had been very fine to you before and ever since, or words to that effect?

A. I do not recall. Those are my feelings about Mr. Bishop. I have always regarded him as a very good friend.

Q. And didn't they ask you names of former employees of M. C. A. and you gave them the names of Eileen Quinn and Elsie Jensen?

A. Yes, I probably did.

Q. And they were two former employees of M. C. A.?

A. Yes.

Q. And you told the young men, so you told Miss Halpern, that you did not know where Elsie Jensen could be located?

A. I do not remember. I may have, because I don't know. I know her as an acquaintance. We have never been very friendly.

(Testimony of Isabel Katleman)

Q. Well, didn't you say to those young gentlemen that [279] you did not know where they could locate Elsie Jensen? A. Probably.

Q. And didn't you also say to Miss Halpern that you gave him the name of Eileen Quinn because you did not think they would bother her because she was out of town? A. No, I did not.

Q. You did not say that?

A. I gave them the name of Eileen Quinn.

Q. Didn't you then meet her again on Sunday and have dinner with her? A. No.

Q. When did you meet with her again?

A. I haven't seen her.

Q. What? A. I have not seen her since.

Q. You have not seen her since? A. No.

Q. Did you talk to her on the telephone on Monday?

A. I do not remember. She called me one morning. I was ill with a sore throat. She wanted to know how I was feeling and I told her I didn't feel well and would speak with her later.

Q. When did you have lunch with her at Delhaven's?

A. I do not remember, Mr. Doherty. This whole week is all very confused right now [280]

Q. Well, didn't you have lunch with her at Delhaven's on last Monday?

A. Let me think. I may have. I may have.

Q. You may have. Now, that is just less than four days ago.

A. I am trying to recall. Yes, I guess I did. I know I was in Beverly Hills Monday.

(Testimony of Isabel Katleman)

Q. You guess you did. Didn't you tell her there at that time that Mr. Finley had talked with you about your testimony? A. I did not.

Q. You did not? A. I did not.

Q. And you are willing to stand on your testimony that you never talked with Mr. Finley or this fine young gentleman here at the counsel table anything respecting what you were going to testify to in this case?

A. Definitely not. [281]

Q. Now, you have seen Miss Quinn lately, haven't you? A. Yes.

Q. And you found that she has been subpoenaed in this case to testify for Mr. Finley, and she was subpoenaed at San Francisco?

A. Well, I don't know. Miss Quinn was in Los Angeles.

Q. Well, she has stayed at your house, has she not?

A. She did, yes.

Q. She has stayed at your house since she was subpoenaed? A. Yes, she was my house guest.

Q. And neither you nor Miss Quinn talked about what you were going to testify about in this case?

A. No, we didn't. Miss Quinn and I have been friends for a long time. We have many things to discuss. She wanted to know what the case was about, because she has been out of the business for some years, and I gave her a brief resume of it.

Q. Where did you find out what this case was about?

A. Well, I think everybody in the music business knows about it. I have read about it in the papers, and



(Testimony of Isabel Katleman)

I know Mr. Finley, and everybody has been considerably interested since we heard there was to be a case.

Q. In what papers did you read about it?

A. Trade papers, "Variety" "Billboard," and the [282] "Daily News." Those are the papers I generally read.

Q. Where did Mr. Christensen get the information that caused him to ask you where you had worked on specific dates?

Mr. Christensen: To which we object as calling for her conclusion and opinion.

The Court: Overruled.

The Witness: Would you repeat the question, please?

The Court: Read it, please.

(The question was read.)

The witness: Could you qualify it? I don't understand, for example,—

Q. By Mr. Doherty: Well, Mr. Christensen asked you various questions here running over some ten or twelve pages yesterday about conversations you had with people at different times and places, and where you worked. Where did Mr. Christensen get that information, if you know?      A. I don't know.

Q. —in order to enable him to ask you those questions?

A. I don't know. He could have gotten it from almost any one in the music business, I presume.

(Testimony of Isabel Katleman)

Q. Now, referring to page 244 in the transcript, beginning at line 5, Mr. Christensen asked you these questions, and these answers were given:

“Q. During the time that you were there, did you [283] have any conversation with Mr. Bishop concerning a contract with Wayne Daillard?

“A. Well, yes.

“Q. Tell me what that was.

“A. Oh, possibly three or four months after I had commenced working there and was learning the music business we discussed the fact that M. C. A. was booking the Pacific Square Ballroom.

“Q. By ‘we’ you mean you and Mr. Bishop?

“A. Mr. Bishop and I were.

“Q. That is one of the defendants here?

“A. Yes.

“Q. Tell me what was said.

“A. Something to the effect that there was an exclusive booking arrangement with Pacific Square, and I had been reading the by-laws of the American Federation of Musicians to familiarize myself with the business. I knew nothing about it, and I had recalled a phrase stipulating that no agent could book exclusively. And he said or intimated—

“Q. Who said?

“A. Mr. Bishop intimated there were—

“Mr. Doherty: Just a minute.

“By Mr. Christensen:

“Q. Instead of intimated, what did he say or do? [284]

“A. I am sorry. He sort of smiled and said, ‘Well, there are ways of getting around that,’ to be exact

(Testimony of Isabel Katleman)

Now, where did Mr. Christensen get the information that there was a conversation between you and Ames Bishop—

Mr. Christensen: To which we object.

Mr. Doherty: —respecting the Wayne Daillard contract made in 1941, if you know.

Mr. Christensen: To which we object as calling for her conclusion or opinion.

The Court: Overruled.

The Witness: I do not know.

Q. By Mr. Doherty: Now, are you certain that you didn't tell Mr. Finley, or this fine young gentleman here at the counsel table, about this conversation when you talked with Mr. Finley and with this young gentleman?

A. I mentioned the agreement to Mr. Finley several months ago after he had gotten the lease at Mission Beach. I had told him, by that time I believe every one in the industry knew that Mr. Bishop was booking Pacific Square, and I had remarked about it to him about that time, but I don't believe we have discussed it since.

Q. You remarked to Mr. Finley that there was a contract between Music Corporation of America and Mr. Daillard for Pacific Square? [285] A. Yes.

Q. You told Mr. Finley at that time the substance of this conversation to which you have testified, did you not?

A. I possibly may have.

Q. You then did talk with Mr. Finley before coming to this court?

A. Over a year ago, yes, Mr. Doherty, but I didn't know I was coming to court then.

Q. I will show you a photostatic copy of an original letter, this being the letter to Pacific Square Corporation from Music Corporation of America. Now, is that the

(Testimony of Isabel Katleman)

letter that you and Mr. Bishop discussed on the occasion that you refer to?

A. I believe so. I had never seen the letter except just like this to glance at.

Q. You never read it?

A. No, I didn't. I presume that is the same letter.

Mr. Doherty: It is stipulated, Mr. Christensen, that this is a photostatic copy of the letter between Music Corporation of America and Pacific Square Corporation which is involved in the issues in this case?

Mr. Christensen: Mr. Doherty, I only know that this letter was presented by Mr. Jules Stein and attached to his deposition. That is my only knowledge on the subject, sir.

Mr. Doherty: You have no objection, then, to its being [286] introduced at this time? The young lady gives as her opinion, and I am not quoting her exactly, that from her casual observation it is the letter.

Mr. Christensen: I have no objection.

Mr. Doherty: May it be marked, your Honor, as Defendants' E?

The Court: So ordered.

(The document referred to was marked as Defendants' Exhibit E, and was received in evidence.)

Mr. Doherty: May I read it to the jury, your Honor please?

The Court: Yes.

Mr. Doherty: This is a photostatic copy of an original document on the letterhead of Music Corporation of America, dated November 4, 1941:

(Testimony of Isabel Katleman)

"Pacific Square Corporation

Pacific Boulevard Ballroom

Ash Street

San Diego, California

"Gentlemen:

"This letter confirms agreement made between us today, as follows:

"1. We agree to give you first refusal on all orchestra bookings for the city of San Diego. If you do not contract for any orchestra offered you within forty-eight (48) hours from the first submission, [287] we are free to sell this orchestra anywhere in your territory upon terms no less than submitted to you. It is definitely understood, however, that engagements in theatres, expositions, fairs and the like are not included in this agreement.

"2. In consideration of our granting you the first refusal on orchestra bookings, you agree to buy from us either seventy-five (75) per cent of the orchestras offered to you upon the terms submitted, or a minimum of thirty-five (35) orchestras per year.

"3. You further agree that should you employ a weekly house band, averaging two (2) or more days per week, that this house band will be obtained from us for at least forty-eight (48) weeks out of the year.

"You understand and acknowledge the fact that in all cases we are acting only as agents for our orchestras and will use our best efforts to supply all the orchestras under our management according to the above conditions. However, it is understood that should an orchestra of its own accord accept engagements in your territory that we are

(Testimony of Isabel Katleman)

unable to control such bookings, and we shall not be responsible therefor. All the rules and [288] regulations of the American Federation of Musicians become a part of this agreement.

"The original term of this agreement extended from January 1, 1941 to January 1, 1942. You are to have options to extend this agreement for five (5) successive periods of one year each, commencing on January 1st and ending on December 31st of each year, provided that you have complied with all of the terms and conditions of this agreement during the preceding year.

"These options are to be exercised consecutively by written notice to be received by this office prior to January 1st of each year. If you have not complied with the terms and conditions of this agreement it automatically comes to an end at the end of the year within which the failure to comply occurred.

"It is also understood that all orchestras booked by you under this agreement may be played only at the Pacific Boulevard Ballroom, Ash Street, San Diego, or Mission Beach Ballroom unless you receive written consent from us to alter this arrangement.

"If this letter is satisfactory kindly have one of your officers signify your acceptance by [289] signing for your company in the space provided below.

"Yours very truly,

"Music Corporation of America"

And there are two signatures. One looks like Mr. Kramer, written very poorly, so I will not vouch for the signature, and then at the lower left-hand side there is:



(Testimony of Isabel Katleman)

"Accepted:

"Pacific Square Corporation

"By Wayne Dailard, President." [290]

Mr. Doherty: Mr. Christensen, solely for the purpose of expediting the trial and putting the matter before the jury in more consecutive order, have you any objection to the introduction at this time of the subsequent contract?

(Discussion between counsel off the record.)

Mr. Doherty: Excuse us, your Honor. Counsel are trying to get to an agreement to expedite matters here.

The Court: Now, gentlemen, you had better have your conversation later.

Mr. Christensen: Yes, go right ahead.

The Court: I don't know whether you can be heard or not. These sounding walls are very keen, and I can hear what you say, and maybe some of the jury can.

Mr. Doherty: They are freakish, your Honor. Sometimes there is a dead space. Sometimes when I stand here and your Honor speaks, I don't hear a word, and if I step back, I can hear you clearly.

We now offer as Defendants' F a document dated the 3rd day of May, 1944.

May I read just a brief part of it to the jury? I will not read all of it. It will be all in evidence, but I don't intend to take the time to read the entire document.

The Court: If it is satisfactory to the other side.

Mr. Doherty: Would you like to have all of it read?

Mr. Christensen: Yes. [291]

(The document referred to was marked as Defendants' Exhibit F, and was received in evidence.)

(Testimony of Isabel Katleman)

Mr. Doherty: Now reading Defendants' Exhibit F, entitled "Agreement."

"This Agreement, executed in duplicate as of the third day of May, 1944, by and between Music Corporation of America, a corporation, first party, and Wayne W. Dailard and Frances A. Dailard, second parties,

Witnesseth:

"Whereas, first party is the exclusive agent and representative of a number of orchestra leaders and orchestras, and

"Whereas, second parties, as general partners of Pacific Square, Ltd., a limited partnership, are the operators of Pacific Square Ballroom, at Pacific Boulevard and Ash Street in the City of San Diego, County of San Diego, State of California, and

"Whereas, one or both of said second parties, alone or in conjunction with others, are the operators of the Mission Beach Ballroom, at Mission Beach, in the County of San Diego, State of California, and

"Whereas, first party is desirous of furnishing orchestras to second parties and second parties are desirous [292] of obtaining orchestras from first party,

"Now, Therefore, in consideration of the premises and of the respective covenants and agreements of the parties herein contained, it is mutually agreed as follows:

"(1) First party agrees to afford to second parties the first refusal on all orchestra bookings offered by first party for engagements at ballrooms, open air pavilions, street dances in the County of San Diego, State of California, it being understood and agreed, however, that first party shall be under no obligation to offer to second parties

## (Testimony of Isabel Katleman)

the first refusal of such orchestra bookings for engagements in theatres, concerts, radio broadcasts, and other similar functions.

"In the case of expositions and fairs, first party shall give second parties the first refusal on all orchestra bookings for engagements at commercial ballrooms, dance halls, open air pavilions, street dances, within or in connection with such exposition or fair, but shall not be obliged to do so in the case of engagements at non-commercial ballrooms, dance halls, open air pavilions, street dances, or the like, nor in connection with engagements at theatres, shows, cafes, night clubs, radio [293] broadcasts, concerts, or the like, within or in connection with such exposition or fair.

"For the purposes of this agreement a commercial ballroom, dance hall, open air pavilion, street dance, shall be deemed to be one which is operated primarily for profit or gain; and a non-commercial ballroom, dance hall, open air pavilion, street dance, or the like, shall be deemed to be one operated primarily for the good-will or advertising value thereof rather than for the profit or gain realized or to be realized from the operation thereof.

"(2) All orchestra bookings offered by first party to second parties pursuant to this agreement shall be submitted to second parties at San Diego, California, for their acceptance or rejection. If second parties shall not accept and contract for any orchestra so offered within forty-eight (48) hours from the submission of the same to second parties, first party shall be free to offer said orchestra elsewhere within San Diego County; provided, however, that it shall not offer the same upon terms or

(Testimony of Isabel Katleman)

conditions more favorable to the purchaser than the terms and conditions upon which it was offered to second parties. [294]

“(3) This agreement extends to all orchestra leaders and orchestras under the management of first party, and first party agrees to employ its fullest powers and resources to supply second parties with all leaders and orchestras under first party’s management in accordance with this agreement. It is understood and agreed, however, that if any leader or orchdestra under first party’s management accepts an engagement in San Diego County otherwise than through the offices of first party, and under circumstances not subject to the control of first party, and under circumstances not subject to the control of first, first party shall be under no obligation to second parties on account thereof.

“(4) All the rules and regulations of the American Federation of Musicians now or hereafter existing are hereby made a part of this agreement.

“(5) This agreement shall commence on the first day of May, 1944, and shall continue thereafter to and including the thirtieth day of April, 1945; provided, however, that second parties shall have options to extend this agreement for five (5) successive terms of one year each commencing on the [295] first day of May and ending on the thirtieth day of April in each instance, upon condition, however, that second parties shall have complied with all the terms and conditions of this agreement during the preceding year. Such options are to be exercised consecutively by written notice to be received by first party at its office at Beverly Hills, California, on or before May

(Testimony of Isabel Katleman)

first of each year. If second parties shall fail to comply with the terms and conditions of this agreement, the same shall automatically come to an end at the end of the current term during which failure to comply occurs.

“(6) No orchestra furnished by first party to second parties hereunder shall be played at any place other than Pacific Square Ballroom, Pacific Boulevard and Ash Streets, San Diego, California, or Mission Beach Ballroom, Mission Beach, San Diego, California, or a ballroom, dance hall, open air pavilion, street dance, operated by second parties at an exposition or fair within San Diego County, without the written consent of first party.

“(7) In consideration of this agreement, second parties agree to purchase from first party [296] either a minimum of seventy-five (75) per cent of the orchestras offered by first party to second parties pursuant to this agreement, or in the alternative, a minimum of thirty-five (35) orchestras per year, which thirty-five (35) orchestras cannot be less than 75% engaged by said second party.

“(8) In *further* consideration of this agreement, second parties agree that if they should employ a weekly house band playing an average of two or more days per week, such house band shall be purchased from first party for a minimum of forty-eight (48) weeks out of the year.

“(9) This agreement is personal to the parties hereto and is not transferable to any other parties, firms, persons, or corporations.

“(10) This agreement supersedes the previous letter agreement dated November 4, 1941.

“In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.

“Music Corporation of America,



(Testimony of Isabel Katleman)

Signed by an officer who I think is Mr. Jules Stein, the president. I will not vouch for that. It looks like the signature of Mr. Stein. And "Wayne W. Dailard" and "Frances A. Dailard." [297]

Mr. Doherty: That is all.

Mr. Christensen: Mr. Doherty, you mean that is all the questions you have?

Mr. Doherty: Yes, sir.

Re-Direct Examination

By Mr. Christensen:

Q. Miss Katleman, you were asked concerning a portion of your conversation had with Mr. Jaffe. Will you tell us what the rest of the conversation was?

A. You mean on that what we talked about at the luncheon?

Q. Yes, I would like to have the whole picture, if you will.

The Court: The whole picture is not conversation. The first question was proper. Now you have modified it and it is not proper.

Mr. Christensen: I used "picture" as meaning the whole conversation.

The Court: It has no meaning in court.

The Witness: We talked about what Mr. Jaffe had done in the war, and various medals he had won, and we talked about his new baby and the furniture he bought for his house. That took up the luncheon hour. I didn't want to particularly discuss the trial, and that was all.



(Testimony of Isabel Katleman)

Q. By Mr. Christensen: Now, you have told us that you told Mr. Finley of the fact of the conversation with Mr. Bishop, [298] and I am not clear when that conversation took place, Miss Katleman. [299]

A. I believe it was a week or so after Mr. Finley had gotten a lease on Mission Beach; around that time.

Q. Then, that would be about November of 1944; would that help you to fix the date for us?

A. Yes, I imagine. I believe he was awarded the lease in October of that year, toward the end of October, and it was a week or so after that.

Q. And where did that conversation take place?

A. In my office at the William Morris Agency?

Q. Was there any person present other than you two, Miss Katleman?

A. I don't remember. Mr. Finley came up to see Jack Flynn and was waiting for him, and we were talking. There may have been people wandering in and out, and I don't believe anyone was there during the entire conversation.

Q. What was that conversation?

A. He was curious to know just what the arrangement was, as I recall it, between M. C. A. and Pacific Square; and I told him what I knew of it, which by then was common knowledge. Everyone in the music business knew it, so actually I was not violating any confidences so far as I know.

Q. Excepting in passing in the hall or passing, have you ever talked with me in your lifetime?

A. No; I haven't. We said, "Hello."

(Testimony of Isabel Katleman)

Q. Either in person, telephone, communicated by mail, [300] telegraph, telephone, or anything else?

A. No. I didn't know who you were when I came in here.

Re-Cross Examination

By Mr. Doherty:

Q. How long have you known Mr. Jaffe?

A. Oh, about a week and a half, possibly, from the day he came into the office.

Q. That was the first time you ever saw him?

A. Yes.

Q. And then you went to lunch with him?

A. Yes.

Q. And did he tell you why he wanted to go to lunch with you?

A. Well, it was lunch time and we were all hungry. I was just getting ready to go and he said, "Well, let us all go together."

Q. You had never seen him before?

A. No; I had not.

Q. Who made the suggestion? Did you call him up and say you would like to go to lunch with him?

A. No. He came into the office.

Q. Oh, he came into your office?

A. And it was one o'clock.

Q. What is it?

A. He and Mr. Karp came into the office. I don't know [301] if Mr. Finley was with him or not. My office and Mr. McDonald's are separated by two other offices.

(Testimony of Isabel Katleman)

Q. Who introduced you to Mr. Jaffe and the other gentleman with him?

A. They came in and introduced—I had met Mr. Karp once before with Barney McDevit. They came into the office to see Mr. McDonald, and he came back ostensibly to say “hello” and introduced me to Mr. Jaffe.

Q. You said just a moment ago that when Mr. Jaffe and the other gentleman came into the office you did not know whether Mr. Finley was with them or not.

A. No; I do not.

Q. Can you refresh your recollection? It is only, you know, a week ago or thereabouts.

A. I did not see him. He may have gone directly into Mr. McDonald’s office, and the floor plan of the building being such that I would not have seen him, you see.

Q. Mr. Finley did not introduce you to Mr. Jaffe?

A. No; Mr. Karp did.

Q. Did Mr. Finley telephone to you that Mr. Jaffe was coming out to see you?      A. No.

Q. Did anybody telephone to you that Mr. Jaffe was coming out?

A. No; and I had a previous luncheon engagement with [302] one of the girls in the office when they walked in.

Q. And you broke that engagement and went with Mr. Jaffe?      A. Yes, and Mr. Karp.

Q. A perfect stranger to you up until that time?

A. Yes. Yes.

(Testimony of Isabel Katleman)

Q. And you just broke the engagement with the young lady you were having lunch with and went to lunch with Mr. Jaffe, a man you had never seen before?

A. Well, I had seen Mr. Karp before, and sometimes it is more enjoyable to go to luncheon with two gentlemen rather than with another girl.

Q. And they just indicated they came out to take you to lunch? A. Yes.

Q. And you went to lunch, sat at the table there and ate lunch, and talked nothing about why they had come to see you?

A. They told me that I was going to be subpoenaed, as I told you before, and asked me if I would testify, to which I agreed, and the conversation then went into other channels.

Q. And they asked you if you would testify and you said that you would? A. I did.

Q. And did you tell them then what you would testify to? [303]

A. I don't believe so, no. I am quite sure that I did not. We did not dwell upon the trial, as I told you previously.

Mr. Doherty: Read that last answer, please.

(Answer read by the reporter.)

Q. I am not asking you whether you dwelt upon it. Was anything said in that conversation as to what you were going to testify to in this case respecting conversations you had with Mr. Ames Bishop on the telephone, conversations you had with Mr. Ames Bishop in his office, or any other phase of this case? A. No.

(Testimony of Isabel Katleman)

Q. Was Mr. Ames Bishop's name mentioned in the conversation?

A. Yes. They asked me if I knew him and I said, "Yes."

Q. Was Mr. Daillard's name mentioned in that conversation?      A. I don't recall.

Q. Was Mr. Finley's name mentioned in the conversation?      A. Yes.

Q. Was Music Corporation of America's name mentioned in the conversation?

A. I don't remember, Mr. Doherty. I am sorry.

Q. You do not remember that?      A. No. [304]

Q. And then, when you got through lunch, after you talked about Mr. Jaffe's baby and other pleasantries, they took you back to the office?      A. Yes, sir.

Q. And did they come into your office at that time?

A. No. They let me off outside and they drove on.

Q. And when you went back into the office was Mr. Finley there?

A. I don't think so; no. No, I am quite sure he was not.

Q. How did you know Mr. Finley was in the building and may have gone into Mr. McDonald's office when Mr. Jaffe first came into your office?

A. I didn't know. I said he may have. I had no way of knowing.

Q. Did you learn later that Mr. Finley had been in to Mr. McDonald's office?